

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,602

NATIONAL AVIATION TRADES ASSOCIATION
and BUTLER AVIATION COMPANY,

Petitioners

v.

CIVIL AERONAUTICS BOARD,

Respondent

ON PETITION TO REVIEW ORDER OF THE
CIVIL AERONAUTICS BOARD

APPENDIX

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United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK



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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Applications of

PAN AMERICAN WORLD AIRWAYS, INC.

for disclaimer of jurisdiction, or,
in the alternative, approval under
section 408 of the Federal Aviation
Act of 1958, as amended.

:
:
: Docket 19045
:
: Docket 19046
:
:
:

APPLICATION OF PAN AMERICAN WORLD AIRWAYS, INC.

PAN AMERICAN WORLD AIRWAYS, INC., (hereinafter called "Pan American") presents this Application and respectfully states as follows:

1. Pan American is a corporation organized and existing under the laws of the State of New York and holds certificates of public convenience and necessity, issued under the Federal Aviation Act of 1958, as amended (hereinafter referred to as "the Act"), authorizing it to engage in air transportation with respect to persons, property and mail between points in the United States and points outside thereof. As such it is an air carrier as defined in the Act.

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2. The Port of New York Authority (hereinafter called the "Port Authority") is a body corporate and politic established by Compact between the States of New Jersey and New York. Pursuant to the Compact and various laws of the States of New York and New Jersey it is authorized to improve, develop, operate and maintain air terminals. Pursuant to the Chapter 81 of the laws of New Jersey of 1949 the Port Authority is the owner of and operates Teterboro Airport located in the Boroughs of Teterboro, Moonachie and Hasbrouck Heights and the Township of Lyndhurst, County of Bergen and State of New Jersey.

3. Under date of September 19, 1967 Pan American and the Port Authority entered into an Agreement under which Pan American will operate Teterboro Airport. The Agreement is subject to approval or a disclaimer of jurisdiction by the Civil Aeronautics Board. A true and correct copy of the Agreement is attached to the original of this Application.*

4. Pan American does not believe that the Port Authority is engaged in a phase of aeronautics by reason of its operation of Teterboro Airport and the other New York Metropolitan airports or that Teterboro Airport constitutes a substantial part of its assets within the meaning of §408 of the Act. Pan American is advised that as of June 30, 1967, the Port Authority investment in Teterboro Airport represented 1.72% of its investment in all air terminal facilities and 0.65%

* Because of the bulk of various exhibits to the Agreement, a summary of their contents is appended to the copies of the Agreement. Pan American will, of course, supply copies of the exhibits if requested to do so.

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of its investment in all Port Authority facilities, and that Teterboro Airport's gross operating revenues for the first six months of 1967 represented 0.87% of total operating revenues from all air terminals and 0.37% of total Port Authority operating revenues. Under the circumstances Pan American does not believe that the agreement between Pan American and the Port Authority as described herein requires Board approval under §408(a)(3) of the Act. To eliminate any question in regard to this matter, Pan American hereby makes application for a ruling from the Board to that effect.

5. In the event the Board rules that the Agreement is subject to the approval of the Board under §408(a)(3) of the Act, then Pan American hereby requests that the Board give this Application expeditious treatment and that the Board follow the procedure established by the last proviso of §408(b), which provides as follows:

"Provided further, That, in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and determines that no person disclosing a substantial interest then currently

is requesting a hearing, the Board, after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may determine that the public interest does not require a hearing and by order approve or disapprove such transaction."

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6. The operation of Teterboro Airport under the Agreement as hereinabove described will provide a useful facility for general aviation in the New York Area and aid in relieving congestion at other airports. It will have no adverse effect upon the public interest. The Agreement provides that the airport must be operated as a public airport and that services will be furnished on a fair, equal and not unjustly discriminatory basis to all users thereof. Such Agreement will not result in any question of undesirable combination, restraint of competition, jeopardy to another air carrier not a party to the transaction or possible conflict of interests. The time required to hold an evidentiary hearing on the question of the operation of the airport by Pan American would serve no useful purpose, would impose unduly on the time and attention of the Board and its staff and would unnecessarily delay the implementation of the Agreement.

7. Pan American is not aware of any other party who may have an interest in this Application and, therefore,

has not served copies thereof on any others. However, Pan American is willing to serve copies of the Application on such other parties as the Board may designate.

WHEREFORE, Pan American respectfully prays that the Civil Aeronautics Board enter an order ruling that approval of the Agreement as herein described is not required under the provisions of §408 of the Act, or, in the alternative, that the Board approve the Agreement under §408 of the

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Act, and grant such other, further or different relief as to it may appear just and proper.

Respectfully submitted,

PAN AMERICAN WORLD AIRWAYS, INC.

By David L. Steege
David L. Steege
Senior Attorney

Dated: September 26, 1967
New York, New York

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"Note: The agreement between the Port Authority and Pan American appears in the record twice, once beginning at R. 126 and once beginning at R. 579. It is printed once in this Joint Appendix in the sequence of the record beginning at R. 579. Since there are citations in the respondent's and intervenors' briefs to the record pages not printed, the following cross references are supplied:

<u>Citations in briefs to the Teterboro Agreement at R.</u>	<u>Can be found in this Joint Appendix at record pages:</u>
127-74	579-626
131-139	582-591
140-142	592-594
144-147	596-599
149	601
150	602
152	604
160-165	612-617
170	622
172-173	624-625

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[Caption Omitted in Printing]

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 28th day of December, 1967

ORDER SETTING MATTER FOR HEARING AND GRANTING MOTIONS TO CONSOLIDATE

On September 26, 1967, Pan American World Airways, Inc. (Pan American) filed applications in Docket 19045 1/ and Docket 19046, requesting that the Board disclaim jurisdiction over two agreements, or alternatively approve such agreements without a hearing under the third proviso of section 408(b) of the Federal Aviation Act of 1958, as amended (the Act). One agreement (Docket 19045) involves the lease and operation by Pan American of an airport in Babylon, New York (Farmingdale Airport), 2/ while the other agreement (Docket 19046) involves the operation of an airport at Teterboro, New Jersey (Teterboro Airport). 3/ On November 6, 1967, ~~Butler Aviation Company (Butler) and National Aviation Trades Association (NATA),~~ 4/ respectively, filed answers to both applications, requesting that the Board deny the appli-

cations, or alternatively, set the matters for hearing. The objectors also requested consolidation of the two proceedings. Pan American filed an answer in opposition to Butler's motion to consolidate on November 16, 1967.

- 1/ This application was amended on October 13, 1967.
- 2/ The airport is commonly referred to as the Republic Aviation Airport and is situated in Farmingdale, town of Babylon, Suffolk County, New York.
- 3/ The Teterboro airport is situated in Bergen County, New Jersey.
- 4/ NATA is a trade association representing the general aviation service industry.

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Farmingdale Company (Farmingdale), a joint venture and partnership, is the owner of Farmingdale Airport, and Fairchild Hiller Corporation (Fairchild), an aviation manufacturer and supplier, is currently the lessee of the airport. On August 4, 1967, Farmingdale and Fairchild modified their existing lease agreement and Fairchild and Pan American entered into a sublease agreement involving Farmingdale Airport, both commencing ten days after approval by the Board. The terms of the Farmingdale-Fairchild lease provide, inter alia, for a five-year term with an option to Fairchild to extend the lease for additional five-year periods to a total of 30 years; termination on 12 months notice by Farmingdale, or upon 30 days notice if the airport is sold or leased to a public authority; and for an annual rental of \$100,000, plus payment of any additional sums received by Fairchild from Pan American under the sublease. The terms of the Fairchild-Pan American sublease are essentially the same as the foregoing except that Pan American is required to pay an annual rent of \$100,000 plus the following additional payments: 50% of the amount received for tie-down or parking of aircraft, including a similar charge for aircraft owned and operated by Pan American; and three cents for each gallon of aviation fuel delivered to Pan American. Fairchild is not in turn liable to Farmingdale for the additional payments unless received from Pan American. The sublease also provides for a fixed annual charge to Fairchild of \$100,000 for use of the airport, subject to adjustment by agreement or arbitration. 5/

Pan American stated that Farmingdale's sole interest in the Farmingdale Airport has been that of an investor and not as an operator; Fairchild's assets as of December 31, 1966, were in excess of \$129,250,000; Fairchild estimates the current value of the lease to be \$25,000 and believes that, such lease does not constitute a substantial part of its assets; and Pan American is obligated to operate the airport as a public airport, as a sublessee of Fairchild. Accordingly, applicant contends that the Board should disclaim jurisdiction over the lease transactions, since Farmingdale is not believed to be a person engaged in a phase of aeronautics, and the sublease

5/ As a result of the agreements, Farmingdale will receive annually \$100,000 and additional percentage payments; Pan American will possess a leasehold interest in the airport; and Fairchild will have use of the airport.

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agreement is not believed to constitute a lease of a substantial part of Birchchild's properties.

On September 19, 1967, Pan American and the Port of New York Authority (Port Authority) entered into an agreement under which Pan American will operate Teterboro Airport. The agreement is for a period of 30 years with the option in Pan American to terminate at the end of five years in the event that gross receipts in the third year are less than \$5,000,000. Pan American is obligated to pay a basic fee of \$664,640 after the fifth year of operation, with lesser amounts in preceding years, and for an additional annual percentage charge of 10% of its gross receipts in excess of \$5,000,000 per annum.

Pan American stated that as of June 30, 1967, the Port Authority investment in Teterboro Airport was 1.72% of its investment in all air terminal facilities, and 0.65% of its investment in all Port Authority facilities, and that Teterboro Airport's gross operating revenues for the first six months of 1967 represented 0.87% of total operating revenues from all air terminals and 0.37% of total Port Authority operating revenues. Pan American contends that the Board should disclaim jurisdiction over the airport operating agreement, alleging that Port Authority is not a person engaged in a phase of aeronautics, and Teterboro Airport does not constitute a substantial part of Port Authority's assets.

Pan American also contends that the respective transactions will have no adverse effect upon the public interest, will not result in any question of undesirable combination, restraint of competition, jeopardy to another air carrier not a party to the transaction, or conflicts of interest; and that the Board should approve the transactions without a hearing pursuant to the third proviso of section 408(b), if jurisdiction is not disclaimed.

In support of its objections Butler alleged, inter alia, that it is engaged in the aviation service industry and presently has fixed base facilities at 12 airports throughout the United States, including one at La Guardia since December 1952, and has a substantial investment there; that the entry of Pan American into the general aviation industry as an airport operator is not in the public interest because of that carrier's disproportionately large size; that the proposed lease and operating agreements involve services customarily provided by itself and other relatively small companies; that Pan American, as the operator of the Farmingdale and Teterboro airports, would be in direct competition with smaller companies such as Butler; that Pan American's interest in attracting the maximum amount

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of general aviation business to the airports will necessarily be to the detriment of its competitors; that Pan American's proposed operations at these airports is the second recent major step taken by trunk carriers to penetrate the general aviation industry, 6/ and the cumulative effect of such acquisitions would result in air carrier domination of the aviation service industry; and that Pan American's interests as a major air

carrier are in conflict with those of an airport operator, and the carrier would be able to act in such a manner as to injure competition. Butler further stated that Pan American's applications pose important issues of policy involving questions as to whether a giant corporation with vast financial resources should be permitted to invade an industry characterized by small companies and intensive competition, and whether, in these circumstances, the exclusive right to provide general aviation services should be independent of air carrier control.

NATA supported and incorporated all of Butler's allegations and, in addition, stated that Board approval of Pan American's application in Docket 19046 would result in the segregation of classes of air transportation and classes of aircraft operators, and involve a determination that may be effective for 30 years.

Butler and NATA argued that the issues presented by Pan American's applications are substantially the same and the parties are identical. Consequently, they request consolidation of the applications into one proceeding. However, Pan American contended that the transactions will enhance rather than restrain competition and that Butler has not demonstrated that it has a substantial interest in the matter or that a hearing is required. Therefore, the carrier argued that consolidation would serve no useful purpose.

From information available to the Board, it appears that the Farmingdale airport at Farmingdale, New York is a large hub airport consisting of 245 acres within the New York Metropolitan Area; it is open to the general public and presently accommodates one fixed base operator; the aircraft based there total 164, consisting of 160 single-engine and one jet aircraft and three helicopters; and there are 80,000 operations annually at the airport, of which 72,000 are local aircraft operators and the remainder are itinerant operators. 7/ Under the Farmingdale-Fairchild-

6/ Eastern Air Lines, Inc. and Remmert-Werner, Inc., Order E-25973, November 15, 1967.

7/ AOPA Airport Directory, 1967; FAA, Airport Facilities Report, Form 29A, 1967.

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Pan American agreements, Farmingdale will receive annual rentals of \$100,000, plus percentages of tie-down and parking fees, and sales of aviation fuels for a maximum period of 30 years.

Teterboro airport is also a large hub airport located on an 878 acre tract of land in the Paterson-Clifton-Passaic Metropolitan Area; this airport is also open to the general public and accommodates four fixed base operators; it presently provides general aviation services, including the sales of fuel and food, making repairs to aircraft, and providing hangar and tie-down services. New York Airways provides

scheduled helicopter service between Teterboro Airport, on the one hand, and the Pan Am building and Kennedy Airport, on the other. There are a total of 304 aircraft based at the airport, consisting of 214 single-engine and 90 jet aircraft; annual operations amount to 274,662, of which 124,498 are local aircraft operators and the remainder are itinerant operators. 8/ Under Pan American's operating agreement, Port Authority will receive a basic average annual income, over the initial five years of that agreement, of \$516,800, further augmented by a supplemental payment of 10% of Pan American's gross receipts in excess of \$5,000,000 per year.

~~Pan American contemplates that the Farmingdale and Teterboro airports will be developed as first class, general aviation airports with new landing areas and ground facilities and an experimental ground transport link to Manhattan from Teterboro.~~ Under its agreement with Port Authority, Pan American will share in the cost of extending and widening Teterboro's runways and will reimburse Port Authority, in annual payments, for the cost of existing facilities there. Plans for new facilities include aircraft service and fuel installations, hangars, and a terminal with waiting rooms and a restaurant. At the Farmingdale airport a new passenger terminal and improved control tower and air navigation facilities are planned. The combined development program is expected to cost more than \$20,000,000. To encourage use of the airports by business aircraft and general aviation, Pan American expects to assist in the further development of high speed and economical air taxi shuttles between both airports and various points in Manhattan.

8/ Ibid.

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Upon consideration of the respective applications and answers thereto, the Board concludes that, in Docket 19045, Farmingdale, by reason its ownership and lease of Farmingdale Airport, 9/ and Fairchild are persons engaged in a phase of aeronautics within the meaning of section 408, and that pursuant to the Farmingdale-Fairchild-Pan American lease agreements Pan American will be contracting to operate the properties of Farmingdale as well as Fairchild. It is apparent that the modified lease agreement between Farmingdale and Fairchild, on the one hand, and sublease of the same premises for the same leasehold term between Fairchild and Pan American, on the other hand, were entered into in contemplation of each other and in substance constitute an integrated transaction 10/ whereby Pan American will in effect acquire a leasehold interest in Farmingdale's property.

The Board also concludes that the Farmingdale airport constitutes a substantial part of the properties of Farmingdale and of Fairchild. Pan American's application contains no allegations, nor does the carrier contend that the Farmingdale airport does not constitute a substantial part of Farmingdale's properties. However, considering the data available to it concerning the size, location, and present and potential operational activities of the airport, as well as the rental incomes to be received under the leasing agreements, the Board has concluded that the Farmingdale air-

port is of such value and significance as to inherently constitute a substantial part of Farmingdale's and of Fairchild's properties. 11/ In view of the foregoing, the Board would not be warranted in disclaiming jurisdiction over the Farmingdale-Fairchild-Pan American airport lease transactions.

The Board concludes, in respect to Docket 19046, that Port Authority is a person engaged in a phase of aeronautics by reason of its ownership and operation of airports, and its contracting with Pan American to operate the Teterboro airport. 12/ In addition, considering the same factors as

9/ Pan American Airways, Inc., et al., Merger 2 CAB 503 (1940).

10/ See Pan American-Panagra Agreement 8 CAB 50,54, (1947); United A. L. Operation of Catalina Air Transport, 6 CAB 1041 (1946).

11/ United A. L.- Western A. E., Interchange of Equipment, 1 CAA 723, 727 (1940)

12/ See, Pan American Airways, Inc., et al., Merger, supra., footnote 9.

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discussed above with respect to the Farmingdale airport case, the Board similarly concludes that the Teterboro Airport constitutes a substantial part of the properties of Port Authority by reason of its substantial value and significance. 13/

We turn to Pan American's alternate request that the transactions be approved without hearing under the third proviso of section 408(b). That provision permits the Board to dispose of an application under section 408 without hearing in cases not involving control of direct air carriers where the Board finds that the transaction does not result in creating a monopoly and does not tend to restrain competition, and where no person disclosing a substantial interest is requesting a hearing. On the basis of the present sparse record it is not possible without a hearing to make the statutory findings in respect to the substantiality of the interest of the objecting parties. Accordingly, we have concluded that the third proviso should not be employed in this instance and that a hearing should be held. In view of the foregoing we will grant Butler and NATA intervention in this proceeding. However, we do not at this time determine whether Butler or NATA possesses a substantial interest entitling them to intervention as a matter of law. 14/

The Board takes note of the difficult problems of congestion that currently exist at the major airline airports serving the New York metropolitan area. As previously indicated, the two agreements involved here-in contemplate the expansion of facilities at outlying airports and thus have a potential for relieving the congestion at the major airports. There is thus a substantial public interest in resolving the issues presented as speedily as possible. To this end, we are directing that this proceeding be set down for hearing promptly, and that it be expedited by the hearing examiner at all stages of the proceeding, consistent with due process to all interested persons. We will expect that the fixing of procedural dates will be in conformance with this goal and that extensions of time be held to the minimum.

13/ Although the percentage value of Port Authority's investment in Teterboro Airport, as compared to its investments in all of its terminal or other facilities, is small, the amount involved is very substantial, and the Board has previously held in other contexts, that amounts of less than one percent constitute a substantial part of the properties of a lessor within the meaning of section 408. Braniff-United Equipment Interchange, 17 CAB 618, 622 (1953). See also Orders E-18359, May 23, 1962, and E-24469, December 1, 1966. Pan American is nevertheless free to submit evidence and argue on brief the jurisdictional question.

14/ See section 302.15(d) of the Board's Procedural Regulations.

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We shall consolidate the two proceedings for hearing since the parties and issues are the same in both cases. Consequently, we believe that consolidation will be conducive to the proper dispatch of the Board's business and will not unduly delay the proceedings.

ACCORDINGLY, IT IS ORDERED:

1. That Pan American's requests for disclaimer of jurisdiction in Dockets 19045 and 19046, be and they hereby are denied;
2. That Pan American's requests for approval of the transactions without hearing in Dockets 19045 and 19046, be and they hereby are denied;
3. That the motions to consolidate in Dockets 19045 and 19046, be and they hereby are granted;
4. That this proceeding shall be set for hearing before an examiner of the Board at a time and place hereafter designated;
5. That Butler and NATA be and they hereby are made parties to the proceeding; and
6. That copies of this order be served upon all parties to this proceeding.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Application of

PAN AMERICAN WORLD AIRWAYS, INC.

Dockets 19045
19046

for approval of its lease and operation
of the Farmingdale Airport and the
Teterboro Airport.

STATEMENT OF ISSUES AND REQUEST FOR EVIDENCE
OF THE BUREAU OF OPERATING RIGHTS

STATEMENT OF ISSUES

1. Will the proposed leasing ^{1/} by Pan American of the Farmingdale Airport and/or the Teterboro Airport be:
 - (a) consistent with the public interest.
 - (b) create a monopoly and thereby restrain competition.
 - (c) jeopardize another air carrier not a party to the contract.
2. If approval of the lease(s) is granted, what terms, conditions, and limitations, if any, should be attached to such approval?
3. Is the entry into general aviation activities by an air carrier consistent with section 102(f) of the Act?

1/ Although the proposed contract between Pan American and PNYA is styled an operating agreement, for purposes of convenience we will refer to it as a "lease".

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REQUEST FOR EVIDENCE

I. PAN AMERICAN

1. Furnish all parties with copies of the information contained in and annexed to the applications in Docket 19045 and Docket 19046. Further,

furnish for Docket 19045 (Farmingdale) the appropriate and similar information contained in exhibits C, D, E, J, and M in Docket 19046 (Teterboro) application.

2. Supply all correspondence and draft contracts, agreements, and leases between Pan American (PAA), on the one hand, and Fairchild-Hiller, Farmingdale Company and the Port of New York Authority, on the other hand, pertaining to the negotiations, lease, and operation of the two airports in issue.

3. In detailed narrative form describe PAA's reasons, intentions, and purposes in leasing and operating each of the two airports.

4. Describe fully PAA's plans for the operation of each of the airports including:

(a) The nature, type and extent of services as a fixed base operator to be performed for itself and others;

(b) The sale of general aviation aircraft, spares and parts by PAA;

(c) The licensing of or subleasing of space to other fixed base operators (FBO) including:

(i) Qualifications required by Pan American and the Port of New York Authority of such operators to continue or to inaugurate fixed base operations;

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- - - - -X
 :
 In the Matter of the Application of :
 :
 PAN AMERICAN WORLD AIRWAYS, INC. :
 :
 for a disclaimer of jurisdiction, or, :
 in the alternative, approval under :
 §408 of the Federal Aviation Act :
 of 1958, as amended :
 :
 - - - - -X

Docket Nos. 19045
 19046

AMENDMENT NO. I
TO
APPLICATION OF PAN AMERICAN WORLD AIRWAYS, INC.
IN DOCKET 19046

Pan American World Airways, Inc. (hereinafter called "Pan American") presents this Amendment No. I to its Application in Docket 19046 and respectfully states as follows:

1. The Application of Pan American in Docket 19046 requested a disclaimer of jurisdiction, or, in the alternative, approval under §408 of the Federal Aviation Act of 1958, as amended, of a certain Agreement between the Port of New York Authority (hereinafter called the "Port Authority") and Pan American under which Pan American would be the operator of Teterboro Airport in the State of New Jersey.

2. The Port Authority and Pan American have entered into a Letter Agreement dated January 3, 1968 pursuant to the

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above Agreement. A true copy of that Letter Agreement is attached hereto.

3. Pan American respectfully requests that its Application and the Agreement submitted in Docket 19046 be amended in accordance with the Letter Agreement submitted herewith.

Respectfully submitted,

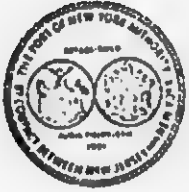
PAN AMERICAN WORLD AIRWAYS, INC.

By David L. Steege
David L. Steege
Senior Attorney

Dated: January 23, 1968
New York, New York

[Certificate of Service Omitted in Printing]

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THE PORT OF NEW YORK AUTHORITY

111 Eighth Avenue - at 15th Street, New York, N.Y. 10011

COMMISSIONERS

S. Sloan Colt, Chairman
 James C. Kellogg III, Vice Chairman
 Howard S. Cullman, Honorary Chairman
 Gerard F. Brill
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 Donald V. Lowe
 Joseph A. Martino
 Ben Regan
 William J. Ronan
 W. Paul Stillman

Austin J. Tobin, Executive Director Telephone 620-7271

January 3, 1968

Pan American World Airways, Inc.
 Pan American Building
 200 Park Avenue
 New York, New York 10017

Dear Sirs:

Reference is made to the Agreement for operation of Teterboro Airport between Pan American World Airways, Inc. and The Port of New York Authority, dated September 19, 1967, and Pan American's request of the same date to the Port Authority to apply to the Federal Aviation Administration for a grant of Federal funds covering the costs of the Runway and Taxiway Construction under the above Agreement. Pursuant to the above request, the Port Authority has applied to the Federal Aviation Administration for a grant of Federal funds. Attached is a copy of a letter dated January 2, 1968 from Mr. George M. Gary of the FAA advising as to the status of funds for such grant.

The Port Authority shall enter into the Grant Agreement (in the form attached hereto) with the Federal Aviation Administration for the sum of \$1,034,678 which we have been advised is the extent of monies available at this time for the above construction.

Pan American hereby authorizes the Port Authority to proceed with the construction of all of the Runway and Taxiway Construction and Pan American waives its right to terminate the Agreement granted in paragraph (a) of Section 25 of the Agreement.

The Port Authority agrees that it will not, without the prior written consent of Pan American, change the order of work (contract staging) to be performed by the Contractor under Contract TA 300.005 and Addenda 1 through 6 thereunder. The Port Authority agrees furthermore that, upon the written request of Pan American, it shall, to the extent permissible under Contract TA 300.005, require the Contractor to construct that portion of Taxiway A between Runway 1-19 and

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a line 500 feet west of the centerline of and parallel to Runway 6-24 and consisting of approximately 650 linear feet, after the other work covered by said Contract to the extent such other work is covered in the Grant Agreement attached hereto has been performed. Pan American hereby agrees that it will reimburse the Port Authority for any and all costs, amounts, expenses and claims paid to the Contractor as a result of said request by Pan American and action thereon by the Port Authority and shall indemnify and hold harmless the Port Authority therefrom, and all of the foregoing shall be separate and apart from the cost of the Runway and Taxiway Construction.

If the foregoing sets forth our mutual understanding, will you please indicate acceptance and approval by Pan American by signing the enclosed copy of this letter and returning it to us.

Very truly yours,

[Signature]
EXECUTIVE DIRECTOR

Accepted this 3rd day
of January, 1968

PAN AMERICAN WORLD AIRWAYS, INC.

By *[Signature]*
Title *Chairman of the Board*

Enc.

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DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
EASTERN REGION
FEDERAL BUILDING
JOHN F. KENNEDY INTERNATIONAL AIRPORT
JAMAICA, NEW YORK 11430


JAN 2 1968

Mr. John R. Wiley
Director, Aviation Department
The Port of New York Authority
111 Eighth Avenue
New York, New York 10011

IN REPLY
REFER TO: EA-600

Dear Mr. Wiley:

This will confirm agreements reached concerning Federal assistance for the improvement of Teterboro Airport at a meeting in our Washington Office on October 23, 1967.

 The Federal Aviation Administration considers the development of this airport to be in a high priority position for Federal assistance. The agency desires to provide assistance to the extent that funds are available for this purpose.

It is our understanding that the improvements to Runway 1-19 will be accomplished first and that the improvement to Runway 6-24 for which an allocation was made under the 1967 Federal Aid Airport Program will be undertaken as a second stage of development. The agency has approved the request of the Port of New York Authority for such a program change since we understand this procedure will provide for continuous operation of the airport with the least amount of confusion. In addition, it has been agreed that the tentative allocation of \$504,678.00 will be increased by \$530,000.00, \$300,000.00 of which are to be recovered by amendment to Project C620 at John F. Kennedy International Airport.


These funds are the total amount that can be provided to assist in the development of Teterboro at this time. The agency has already started formulation of the Fiscal Year 1969 program, however, and it is expected that funds for completion of the development work in connection with Runways 1-19 and 6-24, to the extent eligible, would be included in that program which will be announced in the spring; certainly not later than April 1968.

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As the agency has previously stated, the land needed for Teterboro is eligible for Federal assistance. FAA will give consideration to a request for participation in land acquisition in the Fiscal Year 1969 program, but cannot make any commitment that land will actually be included in the program. Hopefully, it may be possible to include some portions of the land acquisition in the program, but whether or not this will be possible will depend on the amount of Requests for Aid from all sponsors and the relative urgency from a national standpoint of the development requested by sponsors.

We hope this information will enable the Port Authority to proceed without delay in improvements to Teterboro Airport.

Sincerely yours,


George M. Gary
Director

INITIALED:


FOR THE PORT OF NEW YORK AUTHORITY


FOR THE LESSEE

THE AMERICAN

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FEDERAL AVIATION AGENCY

GRANT AGREEMENT

Part 1-Offer

Date of Offer JAN 2 1968

Teterboro

Airport

Project No. 9-28-017-C801

Contract No. FA-EA-801

TO: The Port of New York Authority
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Agency, herein referred to as the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated October 18, 1967, for a grant of Federal funds for a project for development of the Teterboro Airport (herein called the "Airport"), together with plans and specifications for such project, which Project Application, as approved by the FAA is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for development of the Airport (herein called the "Project") consisting of the following-described airport development:

(1) widen (from 100' to 150') and light Runway 1-19 (3600'); (2) extend and light Runway 1-19 (2000' x 150'); (3) construct and light (a) Taxiway A (450' x 60'), connecting Runway 19 with the north end of Taxiway E, and (b) Taxiway E (5800' x 60'); (4) construct switch house associated with runway and taxiway lighting; (5) relocate (a) east riser ditch, (b) high voltage electrical feeds and (c) overhead telephone lines;

all as more particularly described in the property map attached as Exhibit "A" to the Project Application and in the final plans and specifications to be approved for this project by or for the Chief, Airports Branch, New York Area Office, Eastern Region, FAA, as provided in condition numbered "11.b." appearing below, all of which are hereby incorporated herein by reference and made a part hereof as though the same were set forth herein in full.

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NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of the Federal Airport Act, as amended (49 U.S.C. 1101), and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application, and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and the operation and maintenance of the Airport as herein provided, THE FEDERAL AVIATION AGENCY FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, 50 per centum of all or such costs.

*Pt. Auth. getting
grant from fed.
govt. to
improve Teterboro*

This Offer is made on and subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be \$ 1,034,678.00.
2. The Sponsor shall:
 - (a) begin accomplishment of the Project within ninety (90) days after acceptance of this Offer or such longer time as may be prescribed by the FAA, with failure to do so constituting just cause for termination of the obligations of the United States hereunder by the FAA;
 - (b) carry out and complete the Project without undue delay and in accordance with the terms hereof, the Federal Airport Act, and Sections 151.45-151.55 of the Regulations of the Federal Aviation Agency (14 CFR 151) in effect as of the date of acceptance of this Offer; which Regulations are hereinafter referred to as the "Regulations";
 - (c) carry out and complete the Project in accordance with the plans and specifications and property map, incorporated herein, as they may be revised or modified with the approval of the FAA.
3. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under Section 151.41 (b) of the Regulations.
4. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of Sections 151.57 - 151.63 of the Regulations. Final determination as to the allowability of the costs of the project will be made at the time of the final grant payment pursuant to Section 151.63 of the Regulations: Provided, that, in the event a semi-final grant payment is made pursuant to Section 151.63 of the Regulations, final determination as to the allowability of those costs to which such semi-final payment relates will be made at the time of such semi-final payment.

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5. The Sponsor shall operate and maintain the Airport as Provided in the Project Application incorporated herein and sponsor covenants and agrees, in accordance with its Assurance 4 in Part III of said Project Application, that in its operation and the operation of all facilities thereof, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of any of the facilities provided for the public on the airport.
6. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.
7. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the Project unless this Offer has been accepted by the Sponsor on or before January 31, 1968, or such subsequent date as may be prescribed in writing by the FAA.
8. In addition the sponsor shall:
 - (a) Incorporate or cause to be incorporated in each contract for construction work under the project, or any modification thereof, the equal opportunity clause as set forth in Section 202 of Executive Order No. 11246 of September 24, 1965, or such modification thereof as may be approved by the Secretary of Labor.

- (b) Incorporate or cause to be incorporated in each bid or proposal form submitted by prospective contractors for construction work under the project the provisions prescribed by Section 151.54(d)(1), Part 151, Federal Aviation Regulations.
- (c) Be bound by said equal opportunity clause in any construction work under the project which it performs itself other than through its own permanent work force directly employed or through the permanent work force directly employed by another agency of government.
- (d) Cooperate actively with the FAA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) Furnish the FAA and the Secretary of Labor such information as they may require for the supervision of such compliance and will otherwise assist the FAA in the discharge of its primary responsibility for securing compliance.

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- (f) Refrain from entering any contract or contract modification subject to Executive Order No. 11246 with a contractor doing business with, or who has not demonstrated eligibility for, government contracts and Federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order No. 11246.
 - (g) Carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the FAA and the Secretary of Labor pursuant to Part II, Subpart D of Executive Order No. 11246; and in the event that the sponsor fails or refuses to comply with its undertakings, the FAA may cancel, terminate or suspend in whole or in part any contractual arrangement it may have with the sponsor, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.
9. The sponsor's financial records of the project established, maintained and made available to personnel of the FAA in conformity to Section 151.55 of the Regulations of the Federal Aviation Agency (14 CFR 151), will also be available to representatives of the Comptroller General of the United States.
10. It is understood and agreed that the terms "Administrator of the Federal Aviation Agency", "Administrator" or "Federal Aviation Agency" wherever they appear in this Agreement, in the Project Application, plans and specifications or other documents constituting a part of this Agreement shall be deemed to mean the Federal Aviation Administrator or the Federal Aviation Administration as the case may be.

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11. It is understood and agreed, with respect to the Project Application dated October 18, 1967,

- a. that the typewritten description of airport development appearing in the second paragraph on Page 1 is hereby deleted and the typewritten description of airport development appearing in the second "WHEREAS" clause on Page 1 of this Grant Offer is substituted in its place and stead.
- b. that final plans and specifications for the construction and lighting work have not been approved by the FAA; also, that the Sponsor will submit such plans and specifications on or before the date occurring ninety (90) days after the date of acceptance by the Sponsor of this Grant Offer and obtain FAA approval thereof prior to starting the work and that the United States will not make nor be obligated to make any grant payment for such work, unless and until such plans and specifications have been so submitted and approved.
- c. Notwithstanding the provision of Paragraph 3, Part III, of the Project Application, ~~the Sponsor covenants and agrees that it will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349) at the airport, or at any other airport now or hereafter owned or controlled by it. In furtherance of the policy of the FAA under this covenant, the Sponsor agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right at the airport or at any other airport now or hereafter owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their relationship to the operation of aircraft can be regarded as an aeronautical activity. The Sponsor agrees to terminate any such exclusive right (including any exclusive right to engage in the sale of gasoline or oil, or both) now existing at the airport, or at any other airport it now or hereafter owns or controls, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right, and certifies that there is no exclusive right not subject to termination under this provision.~~

It is further understood and agreed:

- (1) That the operation of Teterboro Airport by Pan American World Airways, Inc. under a certain agreement for the operation of Teterboro Airport, dated September 19, 1967, and entered into by and between the Sponsor, as airport owner, and Pan American World Airways, Inc., as airport operator, is subject to all of the provisions contained in Part III-Sponsor's Assurances of the Project Application for this Grant Agreement;

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(ii) That the aforesaid agreement of September 19, 1967, provides for the exclusion of certain operations at Teterboro Airport and the Federal Aviation Administration concurs that the civil aviation needs of the public would be better served by excluding from Teterboro Airport the following operations:

- (1) Operations in air transportation (within the meaning of that term as defined in the Federal Aviation Act Sec. 101.(10) (49 USC 1301(10) by: (a) Domestic and Flag Air Carriers certificated under Subpart B of Part 121 of the Federal Aviation Regulations (14 CFR 121.21-29), or such regulations as might supersede Part 121, (b) Supplemental Air Carriers certificated under Subpart C of Part 121 of the Federal Aviation Regulations (14 CFR 121.41-61) or such regulations as might supersede Part 121, (c) Foreign Air Carriers certificated under Part 129 of the Federal Aviation Regulations (14 CFR 129) or such regulations as might supersede Part 129;
- (2) Operations of Domestic and Flag Air Carriers, Supplemental Air Carriers and Foreign Air Carriers, all as defined in subdivisions (a), (b) and (c) of subparagraph (1) hereof, and operations of Commercial Operators certificated under Subpart C of Part 121 of the Federal Aviation Regulations (14 CFR 121.41-61) or such regulations as might supersede Part 121, involving all-cargo operations which are conducted on a regularly scheduled basis or involving charter operations other than single entity charter or leasing operations for use by the charterer or lessee and not for resale by the charterer or lessee to its members, employees, or others;
- (3) Operations of Scheduled Air Carriers certificated to provide air transportation by helicopter or other newly designed aircraft performing like functions under Part 127 of the Federal Aviation Regulations (14 CFR 127) or such regulations as might supersede Part 127 or such regulations as might apply to other newly designed aircraft performing like functions, provided, however, that this limitation shall not apply to scheduled aircraft transportation by helicopter or other newly designed aircraft performing like functions to or from other airports or heliports within the Port of New York District;

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(iii) That the exclusions or any of them or any part thereof of operations at the Airport in accordance with the provisions of paragraph (ii) above shall not constitute a default or breach of the Sponsor's obligations under the Grant Agreement or Assurances under the Project Application, and that with respect to any and all exclusions other than as set forth in paragraph (ii) above which the Sponsor may wish to make at Teterboro Airport, the Sponsor reserves to itself the rights granted under the provisions of Paragraph 2 of Part III of the Sponsor's Assurances.

- d. That this printed language: "... Section A of FAA Technical Standard Order No. N-18, or Advisory Circular (AC) No. 150/5300-1, whichever is applicable according to the currently approved airport layout plan.", appearing in the 9th, 10th, 11th and 12th lines of Paragraph 7, Part III - Sponsor's Assurances, be and the same hereby is deleted and the following language be and the same hereby is substituted therefor: "Section 77.23, as applied to Section 77.27, Part 77 of the Federal Aviation Regulations".
 - e. That the Federal Government does not now plan or contemplate the construction of space or facilities for any of the activities specified in Paragraph 9, Part III - Sponsor's Assurances, and that the FAA will not request and the Sponsor will not be obligated to furnish, under this Grant Agreement, any areas of land or water, or estate therein, or rights in buildings of the Sponsor for such construction.
12. It is understood and agreed that, prior to making application for any Grant Payment in this project, the Sponsor will submit to and obtain approval by the FAA of an Airport Layout Plan of the airport, as shown on the property map attached as Exhibit "A" to the Project Application, showing all land acquisition and airport development heretofore accomplished and hereafter to be accomplished and that the United States will not make nor be obligated to make any Grant Payment, unless and until such plan has been so submitted and approved.
13. Notwithstanding any other provision of the Grant Agreement or any part thereof including the Project Application or any other agreement between the Federal Aviation Administration and the Sponsor, it is understood

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and agreed that (i) if there is any change in the existing tax immunity statutes which results in imposing or increasing property taxes on the Teterboro Air Terminal or a substantial part thereof or substantial improvements thereon, or (ii) if the Civil Aeronautics Board does not approve the agreement for the operation of the Teterboro Air Terminal between Pan American World Airways, Inc. and the Sponsor dated September 19, 1967, or (iii) if Board approval for said agreement shall be issued but subject to any condition, modification or qualification which is unsatisfactory to either Pan American World Airways, Inc. or the Sponsor and said condition, modification or qualification is not removed or modified to the satisfaction of both Pan American World Airways, Inc. and the Sponsor, the Sponsor shall have the right to terminate the Grant Agreement at any time upon one hundred fifty (150) days' written notice to the FAA and repayment of:

A sum of money equal to the unamortized portion of FAAP funds paid by FAA to the Sponsor under the Grant Agreement, amortization to be based upon the useful life of the improvement or 20 years, whichever is less, together with interest computed as follows:

The total interest payable shall be computed by subtracting from 20 the number of years the FAAP funds have been held by

the Sponsor and multiplying by .01. The resultant product shall be multiplied by the amount of FAAP funds paid to the Sponsor and the product thereof shall be the total interest payable by the Sponsor.

In the event the Sponsor exercises the foregoing right of termination, the Grant Agreement and all obligations of the Sponsor thereunder of whatever kind or nature, including but not limited to its obligation to accomplish the Project, the operation and maintenance of the air terminal and all representations and assurances made by it thereunder, shall cease, expire, be deemed canceled and null and void on the effective date of said termination as specified in the Sponsor's notice.

14. It is understood and agreed that the FAA, in tendering this offer in behalf of the United States, recognizes the existence of an agency relationship between the Port of New York Authority, as principal, and the Treasurer of the State of New Jersey, as agent, created by a "Federal Airport Project Agency Agreement" dated August 4, 1948, a copy of which is attached hereto and hereby made a part hereof, and the Sponsor agrees that it will not amend, modify or terminate such agreement without the prior written approval of the FAA; also, that the term: "Administrator of Civil Aeronautics", appearing in such agreement, shall be deemed to mean: "Federal Aviation Administrator".

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The Sponsor's acceptance of this Offer and ratification of the Project Application incorporated herein shall be evidenced by execution of this Offer and Acceptance after provided, and said Offer and Acceptance shall comprise the Federal Airport Act, constituting the obligations and responsibilities of the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Air-
 port. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

By *C. B. Walker*

(TITLE)

Manager, New York Area, Eastern Region

Part II-Acceptance

The Port of New York Authority does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this day of 1968 ...

The Port of New York Authority
(Name of Sponsor)

By

Title ... Executive Director

(SEAL)

Attest:

Title: Secretary

CERTIFICATE OF SPONSOR'S ATTORNEY

I,, acting as Attorney for The Port of New York Authority
(herein referred to as the "Sponsor") do hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of New Jersey and New York, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at New York, New York this day of, 1968

.....
Title General Attorney

FAA FORM 1632 (3-62) USE PREVIOUS EDITION

INITIALED:

PAGE 4

[Signature]
FOR THE PORT OF NEW YORK AUTHORITY

[Signature]
FOR THE LESSEE

PAN AMERICAN

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REPORT OF PREHEARING CONFERENCE HELD JANUARY 19, 1968

Issues

This is a proceeding to determine whether the Board should approve agreements under which Pan American will operate the Teterboro and Farmingdale airports, and if approved, the terms, conditions, and limitations, if any, to be attached to such approval.

It was ruled that the statement of issues proposed by Bureau counsel is correct, subject to Pan American's contention that the restraint of trade of the Section 408 proviso is limited to "air transportation." National Aviation Trades Association and Butler desire to bring in an

~~Issue as to whether the agreement violates Section 308(a) of the Federal Aviation Act and Section 11(1) of the Federal Airport Act. These statutes are administered by the Federal Aviation Agency and the examiner concluded that the matter of enforcement thereof would be left to that agency and~~

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~~will not be tried in this proceeding. The situation concerning these statutes is to be distinguished from that of the antitrust laws, from which the Board's approval would grant immunity. In considering whether to grant such immunity the Board considers the policies of the antitrust statutes and must reach a decision on a balancing of the expected benefits in the light of these policies.~~

law applied correct

* * *

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[Caption Omitted in Printing]

RESPONSE TO NOTICE OF HEARING

The Department of Transportation files this statement in response to the last paragraph of the Notice of Hearing issued by the Examiner on March 6, 1968. The Department of Transportation respectfully requests that it be permitted to participate in this proceeding under Rule 14(b) of the Board's Rules of Practice.

The Department may wish to address itself to any or all of the following issues in this proceeding:

1. New York area air space and airports are presently highly congested.
2. Improved general aviation facilities in the New York metropolitan area are badly needed to alleviate this congestion.
3. The expenditure of funds by the private sector of the economy for the development of reliever airports should be encouraged.

DOT

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OPERATING OF REPUBLIC AND TETERBORO AIRPORTSBY PAN AMERICAN WORLD AIRWAYS, INC.Docket Nos. 19045 and 19046TABLE OF CONTENTS

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PA-2	Republic Aviation Airport
PA-3	Negotiations Leading To The Sublease Of Republic Aviation Airport
PA-4	Pan American-Port Authority Operating Agreement
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PA-R-2	Explanation Of Exhibit Nos. PA-R-3 Through PA-R-5
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PA-R-4	Examples Of Fixed Base Operator's Advertisement Of A Business Jet Assisted By Advertisement Of The Same Business Jet By The Manufacturer - Same Issue Of The Same Media
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Exhibit No.Description

PA-R-6

Letters From Butler Aviation And An Internal Memorandum

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Letter From Atlantic Aviation Corporation To National Aviation Trades Association

PA-R-8

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PA-R-13

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*Exhibit PA-A*STATEMENT OF POSITION OFPAN AMERICAN WORLD AIRWAYS, INC.

The basic question presented by Pan American's applications in this proceeding is whether Pan American's operation of Republic and Teterboro Airports, as proposed by the two agreements before the Board, would be inconsistent with the public interest. This must be decided in the light of the particular facts and circumstances affecting these agreements, and their particular terms and conditions. Vague and extravagant claims of "conflict" between airline and general aviation operations, and unsupportable charges of attempts to monopolize are no more than efforts to confuse this core issue.

It is Pan American's position that, far from being inconsistent with the public interest, the agreements promote the public interest, and conflict in no way with any of the standards established by Section 408 of the Act. The agreements should therefore be approved.

In Pan American's view the key facts and considerations are as follows:

1. There is extreme and increasing congestion at the three major New York jet ports. This involves both ground facilities and use of air space. The situation has become intolerable and threatens to become even worse for the traveling public and for all aircraft operators--airline as well as other types.

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2. Part of the problem results from the insufficiency of facilities for general aviation. It is uncontroverted, we believe, that there is urgent need for the type of improvements and facilities Pan American plans to establish at Teterboro, and hopes it can assist in providing at Republic. This has been established by study after study. In its agreement with the Port of New York Authority relating to Teterboro, dated January 2, 1968, the Federal Aviation Administration expressed its view that it "considers the development of this airport to be in a high priority position for Federal assistance".

These improvements and facilities were not being provided
by the Port of New York Authority, nor is there any indica-
tion, let alone any assurance, that they will be as fully
provided unless the agreement with Pan American is approved.
Approval of that agreement would assure that this type of
development will in fact occur, and guarantees operation
of Teterboro as a first class general aviation airport for
a period of 30 years. So far as Republic Airport is con-
cerned, while the existing status has not permitted the
preparation of specific plans, Pan American believes that
it has helped to preserve this facility as an airport, and
it is prepared to contribute its efforts, ability and
capital to its development.

3. In the light of the urgency, seriousness
and scope of the problem, Pan American believes that what
is needed is full support for development of the type

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which it has proposed, and for similar such efforts by any
and all interested parties, rather than their frustration
as urged by some of the parties to this proceeding. The

key fact is that Pan American has submitted to the Board
a positive proposal, and is prepared to back it with
staff and money, to accomplish what everybody agrees is

required, but nobody else has stepped up to do. In the
absence of overriding public interest considerations to the

contrary, these agreements should and, indeed, must be approved.

4. There are no such adverse considerations as are urged by others. The charge that Pan American is attempting to monopolize airport facilities in or around the New York Metropolitan area is untenable. Exhibit PA-R-20 lists some of the airports already in being, and the Metropolitan Transport Authority has detailed plans for additional general aviation facilities. The need is "open end". All interested competent assistance should be enlisted, rather than discouraged. Since the Federal and other Governmental agencies will necessarily have effective control, there is no possibility of any future "monopoly".

5. Pan American, by the agreements themselves and by law, is committed to operate the airports as public airports in a nondiscriminatory fashion. This is made clear by innumerable provisions in the Teterboro Agreement. For example:

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(a) Section 2 provides that the Airport Operator shall "use the Airport as a public airport in accordance with the aforementioned statutes [Chapter 41 of the Laws of New Jersey of 1949 and Chapter Forty-three and Eight-hundred-and-two respectively of the Laws of New Jersey of 1947] and all other applicable laws and regulations;

entry

Nondis-
crim.

(b) Section 26 - Services Furnished - provides "the Airport Operator agrees that it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable, and not unjustly discriminatory prices for all such services;

(c) Section 35, which sets forth the charges initially to be in force and reiterates, "All charges with respect to the use of the Airport or any part thereof including but not limited to those referred to in paragraph (a) above, shall be at fair, reasonable, and not unjustly discriminatory rates.";

(d) Sponsor's Assurances under the Grant Agreement between the Port Authority and the Federal Aviation Administration (page 15, of Exhibit L) provides that "the Sponsor will operate the Airport as such for the use and benefit of the public" and further obligates the Port Authority and Pan American to insert in any agreements under which a right or privilege is granted at the Airport, a provision which requires such contractor: "(1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and (2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service;".

A further major consideration in this area is
that the Port Authority will maintain substantial control
over Pan American's operation of the Airport. For example:
 the operation and use of Teterboro Airport is circumscribed
 (Section 2); the rules and regulations to be in effect as
of the effective date of the Agreement are prescribed and
Pan American cannot unilaterally change them (Section 7);
Pan American cannot enter into any agreement for the use
and occupancy of the Airport without the consent of the

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Port Authority (Section 10); and, Pan American cannot construct any facilities at Teterboro Airport without the consent of the Port Authority (Section 12).

If New York State takes over Republic, and sees fit to permit Pan American to operate it, there will doubtless be similar provisions in that agreement.

6. Specifically, therefore, what Butler Aviation termed the "fundamental policy decision" to be made by the Board (Statement of Position, p. 1) is an incorrect and misleading statement of the real issue in this case.* It is also an unfairly "loaded" question. If these agreements are approved, Pan American would not be in a position to "control access to, and use of, general aviation facilities". Rather, its administration of the airports would be under stringent requirements referred to above. Similarly, there is no such conflict between Pan American as an air carrier and the general aviation industry as Butler and some other parties attempt to depict. Indeed, as Butler itself points out in another context, Pan American already has a significant stake in "general aviation" and there is no evidence that this has created any conflict.

7. It is true, of course, that any airport operator must make some decisions that could affect the

* As stated by Butler: "Should the airline industry be allowed to control access to, and the use of, general aviation facilities when the airlines and the general aviation industry are in conflict for the use of limited airport space and air space?"

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airport users and the supporting service industries.

There has been no showing, however, nor is there any reason to believe, that Pan American could not and would not make these decisions as fairly and as impartially as any other operator. It is interesting to note that the parties who now suggest that they would prefer that the Port of New York Authority continue to operate Teterboro opposed the Port Authority's recent proposal to increase general aviation peak hour landing fees at the three New York jet ports.

8. Butler Aviation's only proper interest in this proceeding relates to its own private business activities. Yet it concedes (Statement of Position, p. 2) that there is no issue as to whether or not general aviation should be transferred from LaGuardia and Kennedy airports to Republic and Teterboro airports. In fact, of course, there is such a shortage of facilities for general aviation that all new or improved facilities now projected, and more, will be required. Indeed, Butler agrees "that there is a need for additional general aviation facilities in the New York area and therefore

agrees [s] that these airports [i.e., Republic and Teterboro] should be developed fully" (Statement of Position, p. 2). In our view, these concessions, plus Pan American's lack of intention to conduct a general fixed base operation at either of these airports, show that Butler will not be prejudiced by approval of the agreement and, indeed, has no proper interest in this proceeding.

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9. As Pan American has repeatedly made clear, it has no interest in conducting its own general fixed base operation at either of these airports unless this becomes necessary on some short-term emergency basis. Much of the evidence submitted by Butler, attempting to establish that Pan American would be able to compete unfairly with other fixed base operators, is thus irrelevant. To provide full assurance on this point, Pan American is willing to accept as a condition to approval of these agreements the following:

"Except in connection with aircraft which it may sell, own or operate, or on a casual, infrequent or emergency basis, Pan American will not engage in the aviation service business* at either Republic or Teterboro Airports; provided, however, that Pan American may provide such services for a period up to 90 days if necessitated by failure of persons normally engaged in such activities to provide such services."

* Aviation service business involves principally the following activities: (1) the sale to users of aircraft fuel and lubricants; (2) the delivery of fuel into aircraft; (3) aircraft maintenance and repair; (4) the sale and installation of avionics; (5) the provision of hangar storage and outdoor tie-down locations for aircraft (Pan American reserves the right also to provide hangar facilities and public tie-down services); and (6) the performance of turn-around services.

10. Further, again referring to Butler's private business interest, Pan American has made clear its willingness to negotiate with Butler Aviation for it to become a fixed base operator at Teterboro. For its own reasons,

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Butler has declined to enter into such negotiations at this time (Ex. PA-R-6).

11. As best we understand their positions, the Trade Association parties are concerned that Pan American may not be an impartial airport operator, and that it may seek to phase out light aircraft and student training operations by regulation or by fee increases. In addition to what has been stated above that is responsive to these contentions, several further comments are appropriate.

(a) The opposition of NATA to approval of the Teterboro Agreement, and the stated grounds for that opposition, certainly do not have the support and agreement of all its members. One of them, Atlantic

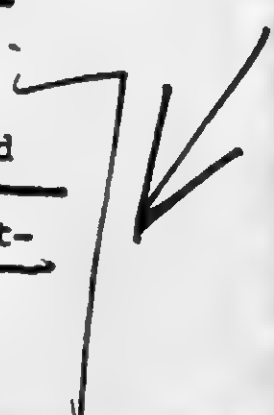
Aviation Corporation, a major fixed base operator at Teterboro, has taken strong issue with the Association's view (Ex. PA-R-7).

(b) The FAA is actively involved in considering new regulations affecting operation of general aviation aircraft in the New York Metropolitan area, which may be necessary for safety reasons, or for improved efficiency in the use of air space. Pan American obviously cannot predict what regulations may be adopted and what effect, if any, they will have on permissible operations at Teterboro and Republic, but these rules will be the same whoever the airport operator may be.

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(c) While Pan American has not yet determined precise fee schedules, and these may have to be changed from time to time, it is inevitable that existing fees at Republic and Teterboro must be increased if the new and improved facilities desired by all are to be supported. There is no reason to believe that they would be increased any more by Pan American than by any other operator providing comparable facilities.

(d) The full development of Teterboro and Republic as primary general aviation airports, and resulting increases in usage by itinerant aircraft, may well



necessitate a reduction in, and eventually a possible phasing out of, "touch and go" student training activities.*
This, again, would only result from saturation use of these airports and available air space and is unrelated to the identity of the airport operator,

12. In conclusion, it is relevant to note that many of the arguments advanced in opposition to approval of the agreements were also raised (and by Butler Aviation) in opposition to the proposed acquisition of Remmert-Werner by Eastern Air Lines. The Board rejected these arguments (Orders E-25973, 25974) and the U. S. Court of Appeals sustained that decision (Second Circuit, January 31, 1968).

* This would not mean elimination of schools as evidenced by the fact that LaGuardia Flying Service, Inc., a school at LaGuardia, flies students to less congested areas for practice flying.

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Exhibit No. PA-6
 Page 1 of 3 pages

Narrative Description Of
 Negotiations Between The
 Port Of New York Authority
 And Pan American

In the month of September, 1964, representatives of Pan American orally expressed to Port Authority representatives Pan American's interest in Teterboro Airport. The Port Authority also was interested and, after a preliminary exchange of background information concerning the physical characteristics and configuration of the Airport and outstanding agreements with tenants, etc., discussions began concerning the terms

upon which Pan American might be permitted to operate Teterboro Airport Among other things, it was agreed early in the discussions that the Airport would continue in operation as a public airport. During November, 1964, Pan American transmitted to the Port Authority an informal memorandum covering elements of a proposed arrangement which included the term of the proposed agreement, termination provisions, extension options, the extent of the Airport property to be included, rights of user and the amount which Pan American would pay the Port Authority during the term of the agreement.

In December, the Port Authority met with Pan American with respect to the physical improvements which might be made to the Airport, particularly runway improvements. Negotiations, aimed at agreement commenced at approximately this time. During the course of these negotiations, in March and May, 1965, conferences were held between representatives of the FAA, Pan American and the Port Authority with respect to federal aid at Teterboro. Also in May, 1965, the FAA sent the Port Authority a statement of certain terms and conditions with respect

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to obtaining federal aid for land acquisition at Teterboro Airport.

While discussions continued, the Port Authority and Pan American entered into a letter agreement dated July 28, 1965 under which the Port Authority agreed to perform certain airport planning work for the account of Pan American. An FAA letter to the Port Authority dated August 6, 1965 set forth certain terms and provisions which would be included in any

agreement relating to any grant in aid made for Teterboro, and on the same day the Port Authority and Pan American executed a letter of understanding.

By letter agreements dated August 31st, October 11th and November 15, 1965 Pan American and the Port Authority agreed to enlarge upon the work being performed by the Port Authority for Pan American's account pursuant to the letter agreement dated July 28, 1965.

After execution of the letter of understanding, a number of drafts and counterdrafts were exchanged and discussed by the parties. Various issues remained unresolved and, in September, 1966, it appeared that the parties might not be able to agree upon a definitive agreement for the operations of Teter-
boro Airport based upon the August 6, 1965 letter of under-
standing. Thereafter and for the remainder of the year, representatives of the Port Authority and Pan American conducted discussions with respect to possible different approaches to an agreement under which Pan American would be using the

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Airport on a basis other than that as originally proposed. Nothing came of this and in early 1967, the parties once again discussed the possibility of reaching agreement within the basic concept of the August 6th letter of understanding. During the following months, differences were gradually resolved and the definitive agreement submitted to the Board was executed on September 19, 1967

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Exhibit No. PA-7

Development Plan - Teterboro Airport

(Butler's Request No. 3)

The development plan for Teterboro Airport, Attachment 1 hereto under separate cover, was prepared by Tippetts-Abbott-McCarthy-Stratton, engineers and architects pursuant to an agreement between that firm and Pan American dated October 26, 1965. Tippetts have had extensive experience in airport construction work and airport feasibility studies, the most recent of which was the selection of an airport site and preparation of a development plan for the airport to be jointly utilized by the cities of Dallas and Fort Worth, Texas.

With the exception of various consultations with Pan American personnel to delineate the scope of the proposed development plan, as well as the various functional guidelines Pan American outlined for Tippetts to utilize in preparing the plan, it was developed as an independent study based on current engineering criteria and design as to facilities. Operating and forecast data and economic studies were developed independently by Tippetts or in reliance on various study materials which Tippetts regarded as reliable.

The development plan as well as cost data in connection with various projected construction were predicated on the latest information as to construction costs available as of the date of the report, March 1966. We have made no further studies as of this date to determine the validity of those projected costs.

Since completion of the development plan for Teterboro Airport, Pan American has engaged Tippetts to do a further

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detailed Master Plan for Teterboro which has not been completed.

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Exhibit No. PA-11

Description Of Improvements To
Be Made At Republic And Teter-
boro Airports

(Bureau's Request No. 7)

Teterboro Airport

Teterboro Airport at present has three runways, 1-19, 6-24 and 14-32, and lacks taxiways to runway ends. Runways 1-19 and 6-24 are 5,000 feet in length and 100 feet in width and are usable in both directions. Runway 14-32 is 3500 feet in length and 80 feet in width, restricted to landing only on 32 and take-off only on 14.

The immediate runway/taxiway improvement program now under construction will provide extension of runway 1-19 to 7000 feet and widening to 150 feet. Runway 6-24 is being extended to 6000 feet and widened to 150 feet. Due to the limited use of runway 14-32, and the contemplated development of the adjoining south area of the airport, this runway will be converted to a taxiway. New taxiway construction will provide direct access to all runway ends, including a new taxiway the full length of and parallel to the extended runway 1-19.

The present low intensity runway lighting is being replaced with high intensity lighting on both runway 1-19 and

runway 6-24. Centerline taxiway lighting is being provided.

Runway 6 is now equipped with ILS/ALS and the
presently approved ceiling and visibility limitation is 500
feet and 1 mile. With extension of this runway to 6000 feet
and widening to 150 feet, installation of high intensity run-
way lighting, lowering of certain designated pole lines, topping
or removal of designated trees, and lighting of certain obstruc-
tions below the flight path, all of which are included in the

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present improvement program, the FAA advises that landing
minima of 200-1/2 will be authorized for reciprocating air-
craft and 300-1/2 for turbo-jet aircraft. Take-off minima
will be 300-1 for two engines.

The Federal Aviation Administration now provides
twenty-four hour control tower services and maintains a flight
service station at Teterboro. Air traffic arriving at and
departing from Teterboro is presently under radar surveillance
except in the immediate Teterboro area, under approximately
1000 feet of altitude, when it is under Teterboro tower control.
Teterboro traffic in the metropolitan area is now controlled
by Newark to and from the Teterboro tower. Upon activation
of the New York area Common IFR Room at John F. Kennedy Air-
port, now planned for July of 1968, all area air traffic, in-
cluding Teterboro, will be controlled from this single point.
It is the expressed view of the FAA that the entire New York
area, including Teterboro, will benefit in air traffic capacity
by virtue of improved utilization of airspace resulting from
this single point of control.

Limousine services, scheduled bus services and scheduled helicopter services are now available between Teterboro and Manhattan and between Teterboro and John F. Kennedy Airport. Limousine services, scheduled bus services and taxicab services are available from Teterboro to points in New Jersey, including Newark Airport. Taxicab service is available between Teterboro and Manhattan, in both directions. Automotive driving time between mid-Manhattan, 9 miles via the Lincoln Tunnel and 15.5

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miles via George Washington Bridge and Interstate 80, runs from 20 to 25 minutes except in limited periods of peak traffic congestion.

The development of general aviation facilities at Teterboro is the subject of a plan prepared for Pan American's architects and engineers, Tippetts, Abbett, McCarthy and Stratton (Ex. PA-7).^{1/} While Pan American has not adopted this development plan in exact detail or with finality, the plan is descriptive of Pan American's general intention for development.

All government services currently available to general aviation at other locations, such as weather service, etc., are presently provided at Teterboro and it is expected that such services will continue.

Republic Airport

Existing facilities, including runways, taxiways, hangars and aircraft storage areas are described in detail in Ex. PA-2 . Present runways are 14-32 with a length of

7500 feet and a width of 200 feet and 1-19 with a length of 6597 feet and a width of 200 feet. Taxiways are provided to both ends of runway 14-32 and to the north end of runway 1-19.

The control tower at Republic is privately operated by FAA certificated personnel. No instrument landing system

I/ This study also shows existing facilities.

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Exhibit No. PA-12
Page 1 of 13 pages

Pan American's Reasons For Entering Into The Agreements To Operate Teter- boro And Republic Airports

{Bureau's Request No. 3}
{Bureau's Request No. 12}

Pan American's reasons for entering into the Teter-
boro Airport and Republic Airport Agreements can best be charac-
terized as an effort on its part to do those things within its
power to develop two general purpose airports to help alleviate
the currently existing airport and air traffic congestion at
the major jetports in the Metropolitan New York area, and to
assist in meeting general aviation requirements, on a reasonable
business basis.

The problem of congestion was best stated by Dr. William J. Ronan, Chairman, Metropolitan Commuter Transportation Authority in his report to Governor Nelson A. Rockefeller of New York on March, 1967, ("Ronan Report" - Ex. PA-9) wherein he stated:

"The air traffic problem, particularly as it relates to existing major airports -
John F. Kennedy, LaGuardia and Newark -

is becoming more intolerable daily. Action to relieve air traffic congestion is long overdue, both from the viewpoint of present and future air operations and the economic development of the region."

As indicated therein, it is estimated that aircraft movement in 1980 at the major New York airports will grow to 1,363,000 from 855,000 in 1965. Peak hours of aircraft movement in 1970 at the three Metropolitan airports will be well in excess of capacity and demand over capacity will substantially increase in 1980. In 1970 the prediction is for a two-hour delay at John F. Kennedy Airport (Ex. PA-9, p. 3). The projected growth, passengers demand in 1980 and the inconvenience that will be encountered by traveling public are set forth in the Ronan Report and will not be duplicated here.

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The critical situation that will obtain in 1980 is further substantiated by the forecast of the Department of Transportation (Ex. PA-10) that the 588,900 scheduled air carrier operations at the New York airports will increase to 1,395,500 in 1980, and that general aviation activities will increase from 1,771,800 in 1965 to 6,606,100 in 1980.

While the foregoing two forecasts of traffic and the resulting potential delays as a result in the New York area may differ in minor degrees as to method of forecasting and accuracy of results, there can be no question that the anticipated growth of aviation activity in the Metropolitan New York area will substantially outdistance existing facilities.

The central role that general aviation airport developments will play in the foreseeable future was confirmed by a report of the Tri-State Transportation Committee, "General Aviation Airports for the Future" (Ex. PA-8). The "Airports For The Future" report highlights the importance of development of primary general aviation airports in the Metropolitan New York area, including Republic and Teterboro, and stresses the important role that general aviation airports will play to alleviate congestion at major Metropolitan jetports.

Pan American's operation of Teterboro Airport and the development of general aviation facilities there would at least assist in helping to meet rapidly growing requirements. This would redound to the benefit of all scheduled carriers at the major jetports, and would benefit the public at large, by reducing

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traffic delays and congestion below what they would otherwise be. It would, in addition, assist general aviation in which Pan American has a particular interest because of its Jet Falcon sales activities.

In this connection, it should be noted that Teterboro Airport has been operated exclusively as a general aviation airport with the exception of scheduled helicopter service, and the restrictions in the Operating Agreement for Teterboro would continue it as an airport especially for general aviation. While Republic will be operated as a public airport, its location and facilities dictate that it will be used exclusively for general aviation.

Pan American does not have plans for immediate develop-

ment of facilities at Republic Aviation Airport for two reasons: the pending law action against Fairchild Hiller Corp. et al. (Ex. PA-17), and the recommendation in the Ronan Report (Ex. PA-9) that the Metropolitan Commuter Transit Authority acquire Republic Aviation Airport as a general aviation facility. As indicated in recent news releases, Governor Rockefeller planned to recommend to the New York State Legislation in his budget message that the State go forward with that acquisition (Ex. PA-17), and he has in fact done so.

While Pan American was negotiating with Fairchild Hiller Corporation and Farmingdale Company for the instant Lease Agreement, it was aware of the possibility that the State of New York might acquire the Airport. It has, in fact, kept the Metropolitan Commuter Transit Authority apprised of those discussions, and the possibility of State acquisition

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is indicated by the provision in the Lease Agreement that it shall terminate if the airport is acquired by a public agency. If the State acquires the Airport, Pan American would be interested in negotiating an agreement with the acquiring agency for its operation. If not, and subject of course to determination of the pending litigation, Pan American contemplates such changes in the agreement as would permit improvement and development of facilities.

Over and above the foregoing, each of the agreements was also entered into for sound business reasons, and with the expectation of reasonable long range financial returns to Pan American and its stockholders. The feasibility study prepared

by outside consultants (Ex. PA-7) shows the economic feasibility of the Teterboro operation. Although the Profit and Loss forecast (Ex. PA-19) for Republic Airport indicates initial losses, this reflects a short term interim situation, pending determination of the future of the Airport. Future requirements for general aviation facilities, and the suitability of Republic Airport leads to the conclusion that it has potential for ultimate profitable operation.

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Pan American's Reasons For Entering Into The Agreements To Operate Teter- boro And Republic Airports

FOR RELEASE IN THE AFTERNOON PAPERS OF TUESDAY, SEPTEMBER 19, 1967.

Statement by Dr. William J. Ronan
Chairman
Metropolitan Commuter Transportation Authority
1350 Avenue of the Americas
New York, New York 10019

Telephone: 245-0600

The cooperative program announced today by the airlines
serving the New York Metropolitan Area and the Port of New York
Authority to improve general aviation facilities is very encouraging.
It can achieve an important measure of relief from the steadily
worsening air traffic congestion at the major airports.

The economy of this entire region depends heavily upon air transportation, both in the movement of large jet airliners and the smaller business aircraft and air taxis. Every day that passes

without improvement penalizes the region's business potential, imposes great inconvenience on all users of airports, and adds to the congestion of the major jetports.

The Metropolitan Commuter Transportation Authority is currently engaged in carrying out a program to improve general aviation in the New York sector of the Metropolitan Region. As part of this program, we are looking toward the acquisition of Republic Airport in Farmingdale, Long Island, and to the provision of adequate general airports in Westchester and Rockland Counties.

The MCTA has been kept fully informed by Pan American Airways as to its plans for leasing Republic Airport. This lease by Pan Am insures the continued operation of this essential airport

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until the acquisition of the property by MCTA.

We are pleased to note that the recommendations made in a report last March by MCTA for the establishment of a statewide network of general aviation facilities has won the acceptance of the Governor and the Legislature. Not only have they endorsed the need for these facilities, but they have authorized as well \$250,000,000 of the proposed \$2.5 billion transportation bond issue for the improvement of existing airports and for the development and acquisition of general aviation sites. The voters will have the opportunity to recognize the importance of these airport improvements to their economic well-being when the transportation bond issue comes up for

public referendum on election day.

The MCTA is also participating in the over-all airport improvement program through joint sponsorship of a very promising experiment to develop a combination rail-bus vehicle to reduce ground travel time between airports and the central city. This vehicle would use existing railroad trackage for part of its trip and local streets for the remainder. We are also exploring the possibility of extending high-speed rail service into the airports.

The plans for these airport improvements reflect the cooperative approach to problems that must be met by aviation industry leaders, by governments throughout the region, and by the quasi-public agencies serving this area. MCTA is proud to be part of this joint effort.

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Exhibit No. PA-15
Page 1 of 3 pages

Pan American's Plans For The
Operation Of Teterboro Airport

(Bureau's Request No. 4)

Pan American's plan for the operation of Teterboro Airport is to operate it as a public airport in accordance with the various statutes cited in the "Whereas" clauses of the Agreement between Pan American and the Port Authority and in accordance with §2 of the Agreement for "Operation and Use" which prescribes the permissible uses of the Airport and restricts it to the various types of activities as set forth therein. In addition, §18 of the Agreement sets forth the various types of services which Pan American obligates

itself to make available at the Airport and specifically provides that those services may be subcontracted for in accordance with the Agreement. Additionally, the manner in which the services are to be provided is set forth in §26 of the Agreement, which provides:

"The Airport Operator agrees that it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for all such services."

Extensive obligations have been assumed by Pan American in connection with the operation of the Airport under Part III - "Sponsor's Assurances" - of the project application of the Port Authority to the Federal Aviation Administration for a Grant Agreement of Federal funds pursuant to the Federal Airport Act (Ex. L to the Agreement).

The Agreement further provides for specific rules and regulations (§7 and Ex. E to the Agreement) that will

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be in effect at the commencement of the Agreement for reasons of safety, health, preservation of property, for the good and orderly appearance of the Airport and for the safe and efficient operation or use of the Airport.

Appendix II to Exhibit PA-7 sets forth a description of the existing facilities at Teterboro Airport and the summary of the various agreements between users of those facilities and the Port Authority. A complete listing of all the agreements relative to Teterboro Airport which will be assigned to Pan American as of the effective date of the

agreement between Pan American and the Port Authority is set forth in Exhibit H to the Agreement between those parties.

The method for providing fixed base operator services as outlined in the Agreements now in existence at Teterboro Airport is expected to continue under Pan American's operation of the Airport. Pan American will comply fully with the terms of the Agreement with the Port Authority and with Federal regulations as regards maintenance of the public character of the Airport, services rendered at the Airport and standards of service.

No decision has been made regarding the licensing of or leasing of space to additional fixed base operators, and this will depend upon business growth, the development of the Airport and the applicable terms of the Agreement with the Port Authority and Federal regulations. Pan American's aim in this regard will be to ensure a high level of quality

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of services performed by fixed base operators and it will have an interest in the financial success of the operators performing such services. Pan American has made known to Butler its willingness to negotiate with Butler, along with others, for additional fixed based operator arrangements.

Pan American does not plan to engage directly in fixed base operations; however, it has an obligation under its Agreement to operate a public airport, and to make adequate fixed base services available. Future unavailability or failure of contractors to provide these services could require Pan American to perform such services itself.

Pan American's plans in connection with the use of Teterboro and Republic Airports in connection with the sale of its Falcon Jet aircraft, or spares and parts for such aircraft, are more specifically set forth in Exhibit PA-16 in response to Bureau's request No. 9. It has no plans to engage in the sale of any other general aviation aircraft, spares or parts.

Since this is subject to future negotiation, Pan American has not prepared a proposed form of agreement with fixed based operators.

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Exhibit No. PA-16
Page 1 of 3 pages

Proposed Maintenance, Sales And
Leasing Of Falcon Jet Aircraft
By Pan American At Republic And
Teterboro Airports

(Bureau's Request No. 9)
(Bureau's Request No. 14)

Pan American currently has throughout the United States ten (10) authorized service centers established to assist owners of Falcon Jet aircraft in the maintenance of their aircraft:

1. AiResearch Aviation Co., MacArthur Field,
Long Island, New York
2. Executive Aircraft Service, Dallas, Texas
3. Field Aviation Co. Ltd., Malton, Ontario, Canada
4. Little Rock Airmotive, Little Rock, Arkansas
5. Ohio Aviation Co., Dayton, Ohio
6. Pacific Airmotive Corp., Westchester County
Airport, White Plains, New York

7. Pacific Airmotive Corp., Long Beach, California
8. Piedmont Aviation Co., Roanoke, Virginia
9. Spartan Aircraft Co., Tulsa, Oklahoma
10. Stevens Aviation, Inc., Greer, South Carolina

Additional Authorized Service Centers are under negotiation:

1. Coombs Aviation, Denver, Colorado
2. Nacional Aerea, Mexico City, Mexico
3. Executive Jet Aviation Inc., Columbus, Ohio

There are additional locations being considered for future authorized service centers to complete Western Hemisphere network:

1. Houston, Texas
2. Minneapolis, Minn.
3. Fort Lauderdale/Miami, Florida

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4. San Francisco, California
5. Seattle, Washington
6. Buenos Aires, Argentina
7. Rio de Janeiro, Brazil
8. Caracas, Venezuela
9. Santiago, Chile
10. Panama City, Panama
11. San Juan, Puerto Rico

Currently, Pan American's demonstrator Falcon aircraft are based at and maintained by Pacific Airmotive Corp. at Westchester County Airport. Its main sales and leasing efforts, however, are conducted from its main office at the Pan Am Building in New York City. Demonstrations of the Falcon aircraft are made at airports throughout the United States where there are prospective purchasers or lessees.

Under Pan American's contract with the manufacturer of the Falcon aircraft, it is obligated to maintain in the

United States a certain level of spare parts for the Falcon aircraft. These are currently maintained at the Pan American hangar at John F. Kennedy Airport.

~~Except for the fact that it~~ ^{Pan American} plans to establish hangar facilities for its demonstration aircraft at Teterboro Airport and possibly perform its own maintenance on those aircraft, Pan American does not contemplate any Falcon sale or leasing activity at Republic Airport at this time other than demonstration from there similar to that which would be done from any airport convenient to a prospective customer. Additionally, its inventory of spare parts, currently maintained at John F.

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Kennedy Airport, may be more conveniently located at Teterboro Airport for the convenience of Falcon owners.

Except with respect to demonstrator and other Falcon aircraft which it may continue to own, Pan American does not contemplate entrance into routine maintenance of Falcon aircraft. It does, however, have an obligation to the manufacturer to make major overhaul facilities available in the United States. To the extent that it may not be able to make satisfactory arrangements with others to make this service available, it may be required to perform this service itself.

From the inception of the Business Jets Division of Pan American through January 31, 1968, it has ordered 160 Falcons, taken delivery of 99, delivered 78 to customers, and sold 7 which as of that date were not delivered. As of the above date it had an option to purchase 40 additional Falcon aircraft. As of December 31, 1967 Pan American's gross re-

ceipts for the sale of Falcon aircraft was approximately \$77.78 Million and for parts and accessories, approximately \$1.5 Million. Pan American's receipts for lease of aircraft totaled approximately \$341,000.^{1/} Pan American is unable to forecast future sales or revenues.

1/ The above figures are preliminary and unaudited.

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Exhibit No. PA-18
Page 1 of 1 page

Pan American's Capital Funds To
Be Used In Developing Teterboro
And Republic Airports

(Butler's Request No. 11)

Teterboro Airport

The details of Pan American's contemplated construction costs for Teterboro Airport are in general set forth in Part V of Exhibit PA-7 - Development Plan for Teterboro Airport. The details are shown in Table 19A, B, C, D, E and F from pages 54 through 59. It is recognized that those projections are for the years 1966 through 1970; however, in general Pan American has in mind the same general construction program for the first five years of operations of Teterboro Airport. Necessarily, increased costs of construction over the past two years may vary the construction program. Additionally, new construction or modification of existing facilities will be dependent upon demand by users.

Republic Aviation Airport

Pan American has no current plans for expenditure of capital funds for Republic Aviation Airport (See Ex. PA- 17).

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Exhibit No. PA-25
Page 1 of 4 pages

General Description of Pan American's
Plans For The Development Of A Man-
hattan Stolport And East River Heli-
port

(Bureau's Request No. 13)
(ACPA's Oral Request)

I. Stolport At 59th Street On The Hudson River

On October 26, 1967 Pan American entered into a
Letter Agreement with the New York Central Railroad
Company under which, subject to a definitive agree-
ment, Pan American would lease from the New York
Central certain property consisting of 50,000 square
feet of filled and unfilled land immediately east of
the bulkhead line and approximately 1,316,000 square
feet of underwater property immediately west of the
bulkhead line on the Hudson River in the vicinity of
60th Street in the City of New York. The definitive
lease would provide for the operation of a Stolport
on the property and the term of the lease would be
for a period of 50 years with Pan American having an
option to purchase the rights, title and interest in
the property.

Various conversations have been held with repre-
sentatives of the Department of Marine and Aviation
of the City of New York looking toward an arrangement
under which Pan American would exercise its option
to purchase the above-mentioned property. The discus-
sions contemplate that the property would be deeded to

the City of New York and Pan American would construct
and operate the Stolport for the City of New York.

It is further contemplated that the City would apply

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to the Federal Aviation Administration for a grant of Federal
funds under the Federal Airports Act, to the State of New
York for a grant of funds as authorized under the Transporta-
tion Capital Facilities Bond Act, and that funds not available
through these two sources would be supplied by the City of New
York and Pan American.

The proposed operations of the Stolport would be to
maximize the immediate relief of airspace and airport conges-
tion by the use of the Stolport by authorized carriers for
shuttle service between the Stolport and the general aviation
airports and the Metropolitan jetports in the New York area.

It is contemplated that the Stolport would be a two-deck structure running 2,200 to 2,400 feet north to south and extending initially 350 feet out into the river. The lower level would be for cabs and automobile parking. All flights would be to the north and south making it unnecessary to fly over any populated area during take-off or landing.

The first plane expected to be employed would be the de Havilland Twin Otter, a two engine turbo prop that can carry 18 passengers and take-off or land in about 1,000 feet. Construction would not be completed until 1970 or later.

The entire matter continues under discussion,

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and no agreement has yet been reached.

II. Heliport At 60th Street In The East River

Pan American entered into a Memorandum Agreement with the City of New York on January 2, 1968 under which, subject to a definitive lease agreement, Pan American would lease a water front site at 60th Street in the East River for the operation of a heliport. The operation of the heliport would be subject to receiving all appropriate approvals by city and other agencies having jurisdiction. Pan American's interest in the site is to establish a light helicopter heliport as a public facility to provide for midtown helicopter connections with Teterboro, Republic and Westchester general aviation airports and with the major jetports. The site is an unused bulkhead area with macadam surface and Pan American plans to construct a small terminal and provide all necessary facilities. Adequate auto parking facilities are available.

It is anticipated that the heliport would be operated during the day approximately from 8:00 AM to 8:00 PM. Light helicopters of the Bell Jet Ranger type and Fairchild Hiller 1100 type will be used. These machines have a loaded gross weight of approximately 3,000 lbs.; have an over-all length of approximately 40 feet, and carry a pilot and four passengers. The Federal Aviation Administration has certified the

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site for use by this type of equipment. It is anticipated that during the first year, operations will develop to approximately 20 - 30 landings per day. All approaches to and departures from the areas will be directly over the river with no over-flying the immediate area.

The heliport will be operated as a public heliport and will be available to any qualified and authorized helicopter operator to be used under such regulations as may be established by the regulating authorities.

- III. Pan American has no additional plans for operation of airports in the New York area other than as set forth above.

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Exhibit No. PA-27
Page 1 of 4 pages

Examples Of Diversification By
Other Companies In The Airline
Business

American Airlines

a) Aviation related activities:

1. Sky Chiefs - a subsidiary operating restaurants in air terminals.
2. Air Data Center, Inc. - a subsidiary operating a reservations computer center.

b) Nonaviation activities:

1. Heritage Inns, Inc., a subsidiary.

Braniffa) Nonaviation activities:

1. 80.9% of Braniff is owned by Greatamerica Corp., a firm engaged in insurance and banking through a number of other subsidiaries.
2. Braniff and its parent, Greatamerica Corp., will enter the hotel business in a venture with Peruvian bankers under which four (4) hotels will be constructed. The Company also plans a restaurant-night club, beach club and market place in Lima.

Continentala) Aviation related activities:

1. Maintenance and Engineering Division - offers services to airlines and corporate aircraft.
2. Continental Air Services, Inc. - a subsidiary providing passenger and cargo services in Laos and Thailand, including ground services. The Company announced

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(Aviation Daily February 1, 1968) it was seeking other industries for Continental Air Services to develop, one of which might be textiles.

3. Air Micronesia - a joint venture with Aloha Airlines and United Micronesia Development Association formed to provide air services in the Pacific Trust Territories.

b) Nonaviation activities:

1. Fox Overseas Theater Corp. - Formed as a joint venture between Continental Air Services, Inc. -

National General Corporation for building and operating motion pictures throughout the world.

2. Formed a joint venture with Lockheed Aircraft Service Corp., Hyatt Corp. of America and Herman Fong to build a 92-room hotel on Guam, to be operated by the Hyatt Corp.
3. Formed a joint venture with Inter-Island Resorts Co. which will invest more than \$10 million to build or purchase hotels in the Hawaiian Islands.
4. United Micronesia Development Association - engaged in the copra business in the Trust Territories of the Pacific.

Trans-Caribbean

a) Nonaviation activities:

1. Transportation Communications of America, Inc. - a subsidiary owning and operating radio stations and

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Spanish language newspapers.

2. D.C. Transit System - owns and operates bus lines.
3. International Railways of Centro America - a subsidiary owning and operating a railway in Central America.
4. TCA Realty - a subsidiary.
5. TCA Corp. - a subsidiary.
6. Interamerican Railway and Industrial System - a subsidiary investing in business ventures in Central America.

Northeast Airlinesa) Nonaviation activities:

1. 85.7% of Northeast stock is owned by Storer Broadcasting Co. which owns and operates radio and television stations.

Piedmonta) Activities related to aviation:

1. Maintenance and Engineering Dept. - conducts a fixed base operation for business aircraft.
2. General Aviation Division - distributor of Beech aircraft and parts and provides flight training, charter and air taxi service.
3. Central Piedmont Aero Division - distributor for Piper Aircraft.

Alleghenya) Nonaviation activities:

1. Allegheny Ventura Corp. - a subsidiary owning sev-

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eral subsidiaries engaged in car rental business.

Frontiera) Nonaviation activities:

1. This airline is a subsidiary of RKO General which is engaged in operation of radio and TV stations, outdoor advertising. RKO General, in turn, is a subsidiary of General Tire and Rubber Co. which manufactures and distributes tires, tubes, chemicals, plastics, rubber, metal and athletic products through a number of subsidiaries.

b) Activities related to aviation:

1. RKO General also manufactures aircraft tires, and tubes, and through Aerojet General manufactures rockets and propellants.

TWAa) Nonaviation activities:

1. Hilton International Co. - a wholly-owned subsidiary operating hotels throughout the world.

Source: Moody's Transportation Manual - September, 1967
 Moody's Industrial Manual - June, 1967

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Exhibit No. PA-R-6
 Page 1 of 3 pages

Letters From Butler Aviation
And An Internal Memorandum

(Re: Ex. BA-508)

**BUTLER AVIATION**

BUTLER AVIATION COMPANY

Executive offices: 29 Broadway, New York, New York 10006 / telephone: BOWling Green 9-1400 x 212

October 27, 1967

RECEIVED IN THE OFFICE OF
VICE PRES. & GEN'L COUNSEL

OCT 30 1967

Mr. Alvin P. Adams
 Vice President
 Pan American World Airways, Inc.
 200 Park Avenue
 New York, New York 10017

HAS JEP JHH ES NPS ABS
 JAM JJC OLS JOE DEN JMC
 HJF JBB WCC RMC CAB

Dear Al:

In light of our recent conversations about Pan American's leases of the Teterboro and Republic airports and the exchange of letters between us last summer about the possibility of Butler's establishing an operation at Teterboro, I thought it advisable to clear up a possible misunderstanding regarding our concern with the Pan American leases.

We are principally concerned about the entry of Pan American
a scheduled air carrier, into the business of operating airports which

serve general aviation aircraft. We are also troubled about Pan American's further penetration of the general aviation sales and service industry. Of course, we also feel compelled to protect our investment at LaGuardia which is potentially jeopardized by diversion of business aircraft from that airport.

I think that you will agree that the possibility of Butler's operating at Teterboro is an entirely separate issue from our participation in the Civil Aeronautics Board proceeding with respect to the leases. We may find it in our mutual interest to discuss the former issue (a Butler facility at Teterboro) at some point in the future, but for the time being, I do not think such discussions would be fruitful.

Sincerely yours,

BUTLER AVIATION COMPANY

Paul S. Dopp
President

PSD/meg

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BUTLER AVIATION

BUTLER AVIATION COMPANY

Executive offices: 29 Broadway, New York, New York 10005 / telephone: BOwling Green 3-1400 x212

June 13, 1967

CONFIDENTIAL

RECEIVED
ALVIN P. ADAMS

RECEIVED

JUN 21 1967

N. E. HALABY

Mr. Alvin P. Adams
Vice President

~~Pan American World Airways, Inc.~~

200 Park Avenue
New York, New York 10017

Dear Al:

This will confirm our telephone conversation of last week with respect to Butler Aviation's interest in negotiating operating rights for a service facility at Teterboro Airport with Pan American World Airways, Inc.

This year Butler Aviation will be adding five or six new facilities to our network of bases. We would like to explore fully the possibilities of establishing a major operation at Teterboro. As you may know, Butler is aviation's largest line service company. In recent years, we have also expanded considerably our maintenance and avionics capabilities.

We believe that we can add substantially to the development of Teterboro as a major general aviation airport in the Metropolitan New York area, and would be pleased to meet with you to discuss our interest in greater detail.

Sincerely yours,

BUTLER AVIATION COMPANY



Paul E. Dopp
President

PSD/meg

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ROYAL CANADIAN MOUNTED POLICE
WITHIN MOST EXPERIENCED AIRCRAFT

DIV. 1
M. A. D.

June 21, 1967

N. E. H.

In view of J. T. T.'s conversation with Henry DuPont, what suggestions do you have?

A. P. A.

Suggest you tell him
we will talk after
reaching agreement with
PNYA. We cannot discriminate
between AA, PRC & Butler



ALVIN P. ADAMS

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CAB Docket 19045, et al.Exhibit No. PA-R-7
Page 1 of 2 pages

Letter From Atlantic Aviation Corporation
To National Aviation Trades Association

(Re: Ex. BA-1)

RECEIVED
ALVIN P. ADAMS
DEC 11 1967

December 8, 1967

Mr. Frank Kingston Smith
Executive Director
National Aviation Trades Association
1346 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Smith:

I have just read National Aviation Trades Association's Motion before the Civil Aeronautics Board (Docket Nos. 19045 and 19046) in the matter of Application of Pan American World Airways, Inc. and wish to comment thereon. However, before I touch upon this matter I wish to suggest that in matters such as this Motion that you request permission to use the name of our Company. Although the Motion does not specifically state that Atlantic Aviation Corporation endorsed your Motion, it does so imply and I would like to point out that I am not in complete agreement.

NATA has clearly stated its position in the Motion. It points out that the authorization to Pan American to lease certain general aviation airports in the New York Metropolitan area would "result in unreasonable restriction of trade, unjust discriminations, etc., etc.". It also states that such leases of airports to Pan Am would permit them to disburse fuel

and render other services customarily provided by "small companies engaged in this business". It further states that as an operator of airports Pan Am would be in direct competition with smaller companies providing similar services.

As you may know Atlantic Aviation has been a tenant of the Port of New York Authority on Teterboro Airport since 1945. During recent months Atlantic Aviation has conducted negotiations with Pan American ~~World Airways relative to the construction, occupancy and use of modern facilities on Teterboro Airport. I would like to make it clear that at no time during any of my discussions with Pan Am have I seen any indication by them of an intent or desire to compete with Atlantic or any other base operators for that matter. On the contrary, my negotiations with Pan Am~~

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Mr. Frank K. Smith

-2-

December 8, 1967

~~merely indicate that Atlantic would look to Pan Am as its landlord or lessor, rather than the Port of New York Authority as heretofore. I have failed to recognize anything in Pan Am's actions thus far to cause me to feel uneasy about our future as a tenant of Pan Am on Teterboro Airport.~~

Another point of interest to me is Pan Am's intent to prohibit the use of Teterboro Airport for certificated route carriers. It strikes me that their interest is one of maintaining an airport primarily for the use of general aviation airplanes. I fail to see why we should object to this.

You know as well as I, Frank, that many of our metropolitan airports are reaching a point of dangerous saturation. We also know that this condition was not brought about by the doubling, tripling or quadrupling of the number of air-carrier airplanes. It was brought about by the wonderfully rapid growth of general aviation. ~~I would submit that we who represent general aviation should recognize the problems that exist and acknowledge that we have contributed to the present situation. I am not prompted to attempt to find a solution to the problem by claiming that the airlines are trying to run us out of business or any other argument based on emotion. I am confident that the airlines recognize, as we do, that general aviation and business aviation are here to stay, that we have a mutual problem, that the problem must be solved, that there are solutions to these problems, that these solutions can be found, but only if we work together in a group effort to find them.~~

I think it's about time that all of us in the aviation industry stop cursing the darkness and light a few candles.

Sincerely,

ATLANTIC AVIATION CORPORATION

W. E. Richards
President

WER:ch

CAB Docket 19045, et al.

Exhibit No. PA-R-8

Page 1 of 1 page

Butler Aviation Is Interested In Constructing A Stolport

YORK TIMES, SUNDAY, JANUARY 7, 1968

SECOND STOLPORT IS PROPOSED HERE

Butler Aviation Wants to Build Strip Near Battery

A proposal to build a landing strip for STOL (short take-off and landing) planes just east of the Battery has been made to the city by Butler Aviation.

The company, which services private planes at numerous airports, including La Guardia, made its proposal before the disclosure on Wednesday that state and city officials were negotiating with Pan American World Airways to develop a \$20-million facility for such aircraft in midtown.

The Pan Am strip would extend just off the shore of the Hudson River from 59th to 68th Street.

Experts familiar with the negotiations do not believe the plans are incompatible. They suggest that a network of stolports may well be developed around the metropolitan area within about five years.

The STOL plane generally fills needs between those filled by the conventional fixed-wing plane and those filled by the VTOL (an acronym for vertical take-off and landing) plane. The helicopter is the most familiar example of a VTOL craft.

Slower Than Jet

The STOL plane tends to be slower than a conventional plane and much slower than a jet airliner but it is faster than a helicopter. It is able to use a field much smaller than the strip that a jetliner needs. But

it needs more room than a helicopter.

An advantage over the helicopter, in addition to speed, is that the STOL is easier to maintain.

STOL planes have outsized wings that provide the extra lift needed to get into the air after a short ground run. However, the outsized wings mean extra wind resistance as speeds pick up, and this limits the maximum speed that can be attained.

Retractable Flaps

Such planes usually have large retractable flaps that add further to the wing surface at slow speeds. And there are other movable wing segments whose primary functions are to smooth air flow and prevent stalling when the plane is flown at slow speeds and a high nose-up angle.

By itself, the ability to make a short take-off and landing is not enough to classify a plane as a STOL, as the term is commonly employed. The biplanes of World War I needed only small fields, but the highest speed attainable on such planes was low.

The true STOL plane is one that can not only fly slow enough to use relatively small fields but, once in the air, can attain a relatively high speed. France's four-engine 60-passenger Breguet can make a low-speed take-off in 1,800 feet and then cruise at 285 miles an hour.

CAB Docket 19045, et al.

Exhibit No. PA-R-20
Page 1 of 2 pages

Airports Used By General Aviation
In The New York Metropolitan Area

(Re: Exs. BA-3, BA-4)

The limitation of general aviation airport availability to areas within 10 miles and within 20 miles of Manhattan is unduly limiting when considering airports of access to the New York Metropolitan area.

Westchester County (White Plains) Airport, located 26 miles from Times Square, accommodated 234,947 general aviation operations during the calendar year 1966, 136,061 of these general aviation operations were itinerant operations, the largest number of such operations handled by any airport, including the Port Authority airports, in the greater New York Metropolitan area. Westchester County Airport is an all-weather airport with instrument landing facilities and runways up to 6,550 feet in length.

MacArthur (Islip) Airport, located 40 miles from Times Square, accommodated more total general aviation operations than any other airport, including the Port Authority airports, during the calendar year 1966. MacArthur handled a total of 303,169 general aviation operations, of which 127,448 were itinerant operations, during the calendar year 1966. MacArthur is an all-weather airport with instrument landing facilities and runways up to 5,032 feet in length.

Morristown Municipal Airport, located 23 miles from Times Square, accommodated 156,975 general aviation operations, 67,883 of which were itinerant, during the calendar year 1966. At this time Morristown has limited instrument facilities and runways only 4,000 feet in length. Plans have been made, however, for the extension of Runway 5-23 to 6,000 feet with

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CAB Docket 19045, et al.

Exhibit No. PA-R-20
Page 2 of 2 pages

Airports Used By General Aviation In The New York Metropolitan Area

(Re: Exs. BA-3, BA-4)

provision of instrumental landing facilities. This airport, upon completion of these improvements, will offer a general aviation potential comparable to Teterboro, Westchester or Republic Airports

The recently announced New York Metropolitan Transportation Authority program for improved general aviation facilities in the State of New York includes plans for the improvement of Spring Valley Airport (Rockland County), located 24 miles from Times Square. This improvement program contemplates runway extension to 5,000 feet and installation of appropriate navigational facilities. The addition of this airport will contribute significantly to general aviation capacity in the New York area.

The Tri-State Transportation Committee report of May, 1965 on General Aviation stated that outside of a 10-mile radius

but within a 20-mile radius of Times Square, three additional general aviation airports were available, all located in New Jersey. These airports are Linden, Caldwell-Wright and Totowa-Wayne. If the 20-mile radius is extended to 30 miles, there are seven additional airports in New Jersey (Lincoln Park, Towaco, Hanover, Summerset Hills, Hadley, Preston and Red Bank) and three additional airports in New York (Christie, Ramapo Valley and Zahns).

Source: Statistical information from FAA Air Activity Report for calendar year 1966.

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TAPA 9167-

AGREEMENT FOR
OPERATION OF TETERBORO AIRPORT
between
PAN AMERICAN WORLD AIRWAYS, INC.
and
THE PORT OF NEW YORK AUTHORITY

September 19, 1967

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THIS AGREEMENT, made the 19th day of September, 1967 by and between THE PORT OF NEW YORK AUTHORITY (hereinafter called "the Port Authority") a body corporate and politic established by Compact between the States of New Jersey and New York and PAN AMERICAN WORLD AIRWAYS, INC. (hereinafter called "the Airport Operator") a corporation organized and existing under and by virtue of the laws of the State of New York and having an office at the Pan Am Building, New York, New York,

WITNESSETH, That:

WHEREAS, by Chapters Forty-three and Eight Hundred and Two, respectively, of the Laws of New Jersey and the Laws of

New York of 1947, as amended and now in force, said two states have authorized the Port Authority to improve, develop, operate and maintain air terminals; and

WHEREAS, pursuant to the aforementioned statutes and Chapter 81 of the Laws of New Jersey of 1949 the Port Authority acquired and is now the owner of the public air terminal located in the Boroughs of Teterboro, Moonachie and Hasbrouck Heights and the township of Lyndhurst, County of Bergen and State of New Jersey; and

WHEREAS, the Port Authority and the Airport Operator are agreed that the arrangement as herein provided for the continued improvement, development, operation and maintenance by the Airport Operator of the public air terminal as shown in hatching on Exhibit A-1, annexed hereto and hereby made a part hereof, will be in the public interest; and

WHEREAS, the Port Authority desires to have the said public air terminal operated by the Airport Operator as a public airport in accordance with the provisions of the aforementioned statutes and in compliance with all other applicable laws and regulations for the benefit of the public and for the benefit of the States of New Jersey and New York; and

WHEREAS, the Airport Operator intends and agrees that the said public air terminal will be operated as a public airport pursuant to the aforementioned statutes and to this Agreement;

NOW, THEREFORE, for and in consideration of the respective promises and mutual agreements made by the parties hereto hereinafter set forth, the Port Authority hereby grants to the Airport Operator the right to operate and use and the Airport Operator hereby agrees to operate and use the said public air terminal as shown in hatching on Exhibit A-1, together with the buildings, structures, fixtures, improvements, runways, taxiways, roads, paved areas of every kind, facilities and other property of the Port Authority located or to be located therein or thereon and all buildings, structures, fixtures, improvements, runways, taxiways, roads, paved areas of every kind, facilities, additions and installations which may be constructed therein or thereon by the Airport Operator or others during the term of this Agreement, all of the foregoing being hereinafter collectively referred to as "Teterboro Airport" or "the Airport", upon the following terms and conditions, and it is hereby mutually agreed as follows:

Section 1. Term

The term of this Agreement shall commence upon the date of notice by the Port Authority to the Airport Operator that either the Runway 6-24 portion of the Runway and Taxiway Construction or the Runway 1-19 portion of the Runway and Taxiway

Construction has been substantially completed by the Port Authority pursuant to Section 22 hereof and shall, unless sooner terminated, expire on the last day of the month during which the thirtieth anniversary of the commencement date occurs.

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Section 2. Operation and Use

~~The Airport Operator agrees that it shall operate and use the Airport as a public airport and in accordance with the aforementioned statutes and all other applicable laws and regulations and it shall operate and use the areas thereof as hereinafter described for the following purposes only:~~

(a) The areas shown in [hatching and stipple] on Exhibit B-1, annexed hereto and hereby made a part hereof, shall be used as a public aircraft landing area, as taxiways and roadways, and for such other use as the facilities now provided at and existing on said areas were designed to accommodate.

(b) The areas shown in hatching only on Exhibit B-1:

(1) For the handling and accommodation of operators, crews and travelers arriving at or departing from the Airport by aircraft;

(2) For the storage, parking, maintenance and servicing of aircraft in covered and open areas;

(3) For the sale, maintenance, repair, servicing, overhaul, conversion and modification of aircraft, and aircraft engines, assemblies, accessories and component parts;

(4) For the storage of fuel and for the fueling of aircraft;

(5) For the charter and leasing of aircraft;

(6) For schools for the training of aeronautical pilots, mechanics, repairmen, navigators, and dispatchers and other aeronautical personnel;

(7) For the storage, parking, maintenance, servicing and fueling of automotive vehicles, automotive equipment and other equipment owned or operated by the Airport Operator in connection with the operation of the Airport or by other persons using the Airport for other purposes authorized hereunder;

(8) For the operation of stores, concessions and other consumer service activities,

reasonably required for the accommodation of operators, crews and travelers arriving at or departing from the Airport by aircraft, and other persons doing business with or who are the guests of the Airport Operator or other users of the Airport;

(9) For the fabrication, manufacture, testing or development of aeronautical products or aeronautical materials which will be used or installed in aircraft at the Airport; and

(10) For all operational, administrative, office and other such related functions in connection with the activities authorized hereunder.

(c) The areas shown in hatching and stipple on Exhibit B-1 and the areas shown in hatching only on said Exhibit may, from time to time, be increased or decreased by mutual agreement of the parties, in which event Exhibit B-1 will be revised accordingly.

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(d) The use of the Airport or any part thereof for any industrial or manufacturing (except as provided in paragraph (b)(9) above) or non-aviation activity is expressly prohibited but the foregoing shall not be deemed to affect contractual rights of others at the Airport existing at the commencement of the term of the Agreement.

(e) The Airport shall not be used for scheduled aircraft operations of any kind or for air transportation operations for compensation or hire, except that the Airport may be used for:

(1) aircraft operations within the Port of New York District by helicopter or other newly designed aircraft performing like functions,

(2) sightseeing flight operations,

(3) single entity charter or leasing operations for use by the charterer or lessee and not for resale by the charterer or lessee to its members, employees or others,

(4) all-cargo operations which are not conducted on a regularly scheduled basis,

(5) flight training or aircraft demonstration operations,

(6) operations of air taxi operators as said classification of air carriers is established under Part 298 of 14 CFR (revised as of February 11, 1967), and

(7) such other air taxi operations as may be mutually agreed upon by the parties.

It is understood that the sale of passage and service for flights at other airports when in conjunction with the sale of passage on helicopters, or otherwise, is not prohibited.

(f) Any work involving run up of aircraft engines shall be performed in a place and manner that are compatible with sound levels at acceptable limits.

Section 3. Care, Maintenance and Repair

(a) The parties have conducted a condition survey of all facilities and properties located at or on the Airport, with the exception of such facilities as are as of that date maintained by any agency of the federal government, which survey is attached hereto as Exhibit C hereof. Prior to the commencement of the term hereof the parties shall bring such survey up to date and said updated survey shall be deemed to be Exhibit C.

(b) The Airport Operator shall have the right at any time during the term of this Agreement to demolish the facilities or structures listed in Subdivision B of Exhibit H as said Exhibit is established pursuant to Section 23 hereof at its sole cost and expense, provided that such demolition does not contravene any occupancy, lease, permit or contract and subject to the provisions of Section 12 with respect to indemnities and insurance. The Airport Operator shall give the Port Authority thirty days' prior notice of its intention to demolish any such structure.

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(c) The Airport Operator shall assume throughout the term of the Agreement the entire responsibility for and shall perform all repair, rebuilding and maintenance whatsoever of the Airport, whether such repair, rebuilding or maintenance be ordinary or extraordinary, interior or exterior, partial or entire, foreseen or unforeseen, structural or otherwise, and without regard to the cause thereof, except that the Airport Operator shall not be required to repair or rebuild any property damaged or destroyed by casualty unless such casualty is required to be covered by insurance under Section 19, and with respect to the buildings and facilities covered by agreements listed on Exhibit H to the condition shown on Exhibit C broadened to include any work to any of said buildings and facilities required to be effectuated by any of the occupants thereof. Without limiting the generality and application of the foregoing, the Airport Operator shall:

(1) At all times keep in a clean and orderly condition and appearance the Airport and all fixtures, equipment and personal property which are located in or on any part of the Airport.

(2) Take good care of the Airport, maintaining the same at all times in good operating condition. Repairs, rebuilding and replacements shall be in quality and class not inferior to the original in material and workmanship.

(d) The obligation of the Airport Operator hereunder shall not pertain or apply to facilities which are actually maintained by agencies of the federal government.

Section 4. Personal Property

The Airport Operator shall have the right to purchase such of the equipment and personal property listed in Exhibit D hereto annexed and made a part hereof as may be available at the commencement of the term of the Agreement as the Airport Operator may select by notice to the Port Authority prior to the commencement of the term of the Agreement.

Section 5. Fees to the Port Authority

A. Fee Obligations

The Airport Operator agrees to pay to the Port Authority the following fees:

(1) Basic Fee

(a) The sum of Three Hundred Twenty Thousand Dollars and No Cents (\$320,000.00) for the first year of the term;

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(b) The sum of Four Hundred Forty-eight Thousand Dollars and No Cents (\$448,000.00) for the second year of the term;

(c) The sum of Five Hundred Seventy-six Thousand Dollars and No Cents (\$576,000.00) for the third year of the term;

(d) The sum of Six Hundred Thousand Dollars and No Cents (\$600,000.00) for the fourth year of the term;

(e) The sum of Six Hundred Forty Thousand Dollars and No Cents (\$640,000.00) for the fifth year of the term;

(f) The sum of Six Hundred Sixty-four Thousand Six Hundred Forty Dollars and No Cents (\$664,640.00) for each succeeding year of the term.

(2) Percentage Fee

An annual percentage fee, equivalent to ten per cent (10%) of the Airport Operator's gross receipts, arising during each annual period of the term hereof in excess of Five Million Dollars and No Cents (\$5,000,000.00), which amount is herein-after referred to as the "annual exemption amount," provided, however, that as required by the context or circumstances, the term "annual exemption amount" shall mean the annual exemption amount as originally fixed herein, or in the case of abatement and/or proration, the annual exemption amount as reduced by the operation of the abatement and/or proration provisions set forth in this Section 5.

The term "gross receipts" as used in this Agreement shall include all monies paid or payable to the Airport Operator for sales made and for services rendered or agreed to be rendered at or from the Airport regardless of the time or place of receipt of the order therefor, and for sales made and for services rendered or agreed to be rendered outside the Airport if the order therefor is received at the Airport, the charges, rentals, fees and other payments of whatever kind or nature paid or payable to the Airport Operator under any lease, sublease, permit, license, or any other agreement, oral or written, relating to the Airport including those listed in Section 23 hereof, all landing, parking and other fees and charges paid or payable to the Airport Operator from any user of the Airport, revenues from or payment for the sale or delivery of petroleum or other products, and any other revenues of any type arising out of or in connection with the Airport Operator's services and operations at the Airport, including its operation

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thereof, provided, however, that any taxes imposed by law which are separately stated to and paid by customers of the Airport Operator and directly remitted by the Airport Operator

to the taxing or to a tax collecting authority, shall be excluded therefrom, and provided, further, that there shall be excluded from gross receipts monies paid or payable to the Airport Operator from its sale of aircraft and from sales by it of aircraft engines, assemblies, accessories and component parts, and provided, furthermore, that monies paid or payable to the Airport Operator from the sale of passage and service for scheduled flights at other airports when in conjunction with the sale of passage on helicopters or otherwise shall be excluded from gross receipts and that the total direct delivered cost including liability insurance (not including overhead or other indirect cost) to the Airport Operator of any aviation fuel or oil products sold by the Airport Operator at the Airport shall be excluded from gross receipts, it being furthermore understood that there shall be subtracted from gross receipts for each annual period an amount equal to (a) amortization or depreciation on a 20-year straight line basis (or on the basis of the useful life if less than twenty years determined under sound accounting practice) on all of the Airport Operator's capital investment in the Airport or facilities thereon other than the Non-deductible Portion of such capital investment as hereinafter defined, and (b) interest on the unamortized portion of such capital investment, for such annual period, at the rate of 7% per annum. The Non-deductible Portion of the Airport Operator's capital investment shall be capital investment in (a) public common usage facilities, such as runways, taxiways, ramps, apron areas, roadways and terminals except paid parking lots and except any part of any terminal or other building in which are located consumer services such as restaurants, shops, newsstands and the like and which are customarily leased to and operated by a concessionaire, and (b) structures and facilities occupied by the Airport Operator or by an entity owned by the Airport Operator or in which the Airport Operator has a majority or controlling voting interest which structures and facilities do not produce gross receipts for the purposes of this Section 5A.(2). If any entity at the Airport which is owned by the Airport Operator or in which the Airport Operator has a majority or controlling voting interest performs any sales or services, the monies received or receivable by said entity pro tanto to the extent of the Airport Operator's ownership, voting or beneficial

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interest, whichever is the greatest, and not the amounts paid or payable to the Airport Operator by said entity, shall be deemed to be a part of the gross receipts hereunder as if the same were the gross receipts of the Airport Operator if the same would be gross receipts of the Airport Operator if received by it, provided, however, that if the amounts paid or payable to the Airport Operator by said entity are greater than the aforesaid amount, said amounts and not the amount as computed above shall be includable in gross receipts.

The term "annual period" as used in this Agreement shall mean the twelve-month period commencing on the date of the commencement of the term of this Agreement and each of the twelve-month periods commencing on the anniversaries thereof except that if the commencement date of the term of the letting shall be a day other than the first day of the calendar month, "annual period" shall mean the twelve calendar months commencing on the first date of the calendar month following the month in which the commencement date shall fall (and each of the twelve-month periods commencing on the anniversaries thereof) and the period from said commencement date to the end of the calendar month in which the commencement date shall fall shall be included in the first annual period.

The computation of the percentage fee for each annual period or a portion of an annual period as herein provided shall be individual to such annual period or such portion of an annual period and without relation to any other annual period or any other portion of an annual period.

(3) Equipment Price

The Equipment Price in the amounts as set forth in Exhibit D as to the property selected by the Airport Operator.

B. Time of Payment and Computation of Amounts

(a)(1) The Airport Operator shall pay the basic fee in advance in equal monthly installments commencing on the commencement date of the term of the Agreement, and on the first day of each and every month thereafter, provided, however, that if said commencement

date shall be other than the first day of the month, the basic fee for the portion of the month in which said fee obligation is effective shall be the monthly installment prorated on a daily basis using the actual number of days in said month.

(2) The Airport Operator shall pay the annual percentage fee as follows: on the last day of the first month following the commencement of each annual period and on the last day of each and every month thereafter including the month following the end of each annual period, the Airport Operator

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shall render to the Port Authority a sworn statement showing its gross receipts for the preceding month and its cumulative gross receipts from the date of the commencement of the annual period for which the report is made through the last day of the preceding month; whenever any such statement shall show that the cumulative gross receipts for that annual period are in excess of the annual exemption amount, the Airport Operator shall pay at the time of rendering the statement an amount equal to ten percent (10%) applied to such excess and shall thereafter on the last day of each month during that annual period and the month following the end of that annual period pay an amount equal to ten percent (10%) applied to the gross receipts of each subsequent month during that annual period. At any time that the annual exemption amount is decreased by abatement as herein provided so that there is an excess of gross receipts as to which the annual percentage fee has not been paid, the same shall be payable to the Port Authority on demand.

(3) The Airport Operator shall pay the equipment price on the commencement date of the term of the Agreement with respect to each item of property as shall have been selected by the Airport Operator in the fixed amounts pertaining thereto as set forth in Exhibit D.

C. Abatement

In the event that the Airport Operator shall at any time by the provisions of this Agreement become entitled to an abatement of the basic fee, the abatement of the basic fee shall be made on an equitable basis giving effect to the amount,

quality and character of the space, the use of which is denied the Airport Operator as compared with the entire Airport. Whenever the Airport Operator shall be entitled hereunder to an abatement of the basic fee, the annual exemption amount shall be reduced proportionately to the reduction of the basic fee.

D. Place of Payments

All payments under this Agreement shall be made at the office of the Treasurer of the Port Authority, 111 Eighth Avenue, New York, New York, or at such other office in the Port of New York District as may be hereinafter substituted therefor by notice to the Airport Operator.

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Section 6. Governmental Requirements

The Airport Operator shall secure, or cause to be secured, without cost or expense to the Port Authority from all governmental authorities having jurisdiction, all applicable licenses, certificates, permits or other authorization and any and all renewals thereof, and shall observe, comply with, obey and execute the provisions of any and all present and future governmental laws, rules, regulations, orders and ordinances which pertain, apply to or affect the operation, use and maintenance of the Airport, or any part thereof, or any activity conducted thereon, provided, however, that the foregoing shall not require the Airport Operator to secure any such license, certificate, permit or authorization, or to comply with any law, rule, regulation, order or ordinance if the activity which is the subject thereof or to which it pertains, is not undertaken or is discontinued, and such omission or discontinuance of any such activity does not contravene the obligations of the Airport Operator under this Agreement, and provided, further, the Port Authority shall assist and cooperate with the Airport Operator to permit compliance with the foregoing and if any license or permit is required to be issued in the name of the Port Authority because it is the Airport owner it shall apply for said license or permit, it being agreed that any cost, expense or liability in applying for or in complying with said license or permit shall be at the sole cost, expense and risk of the Airport Operator, except where such liability is caused by the sole fault of the Port Authority. It is understood further, that to the extent the foregoing shall apply to the operation, use and maintenance of the Airport as encompassed in existing agreements defined in Section 23, the Airport Operator shall enforce compliance with such requirements to the extent provided by such agreements and as to any future subcontracts or

agreements referred to in paragraph (c) of Section 10 hereof the Airport Operator shall insert provisions in its subcontracts or agreements requiring compliance therewith and shall enforce compliance with such provisions. The foregoing provision is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

Section 7. Rules and Regulations

Attached hereto, marked Exhibit E and made a part hereof are the Rules and Regulations to be in effect as of the commencement of the term of this Agreement which shall have been promulgated by the Port Authority for the government and conduct of operations at the Airport, for reasons of safety, health, or preservation of property, for the good and orderly appearance of the Airport, and for the safe and efficient operation or use of the Airport. Any of the said Rules and Regulations may be amended, modified or revoked or additional Rules and Regulations may be promulgated from time to time by the Port Authority with the consent of the Airport Operator. The Airport

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Operator shall not grant the permission called for in Rules and Regulations Nos. 12 and 23 without the prior consent of the Port Authority. The Airport Operator shall observe and obey and shall compel others on the Airport and those doing business with it with respect to the Airport to observe and obey such Rules and Regulations. The Airport Operator may promulgate such additional rules and regulations relating to the governing of conduct of operations at the Airport as in its sole judgment may be required for such purposes, provided the same are not inconsistent with the Rules and Regulations referred to above.

Section 8. Indemnity; Liability Insurance

(a) The Airport Operator shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of the operation or use of the Airport by the Airport Operator or out of any other acts or omissions of the Airport Operator, its officers and employees on the Airport or out of the acts or omissions of others on the Airport with the consent of the Airport Operator.

(b) In addition to the obligations set forth in paragraph (a) of this Section and all other insurance required under this Agreement, the Airport Operator in its own name as assured and naming the Port Authority as an additional insured shall maintain and pay the premiums during the term of this

Agreement on a policy or policies of comprehensive general liability insurance broadened to include or equivalent separate policies covering aircraft liability under the standard aircraft liability policy and airport operator's liability under an airport liability policy none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the following limits: \$25,000,000 per occurrence, liability and property damage under all said policies; \$5,000,000 on property damage to aircraft in the care, custody or control of the Airport Operator.

(c) As to the insurance required by the provisions of this Section and Section 12, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority. As to insurance required by this Section, delivery shall be made at least fifteen (15) days prior to the commencement of the term of the Agreement and as to insurance required by Section 12, delivery shall be made at least fifteen (15) days prior to the commencement of any work covered thereunder. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid

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provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving fifteen (15) days' written advance notice thereof to the Port Authority. Each such copy or certificate shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the term of this Agreement. The aforesaid insurance shall be written by a company or companies approved by the Port Authority, the Port Authority agreeing not to withhold its approval unreasonably.

Section 9. Various Obligations of the Airport Operator

(a) In the performance of the Airport Operator's obligations hereunder and in the operation and use of the Airport, all operations shall be conducted in an orderly and proper manner.

(b) The Airport Operator shall take reasonable measures to keep the sound level of operations at the Airport within acceptable limits.

(c) The Airport Operator shall not cause or permit to be caused or produced upon the Airport any noxious smokes, gases, vapors or odors. The creation of exhaust fumes by the operation of aircraft, helicopters or newly designed aircraft performing like functions, using internal combustion engines, or engines of other types which shall have been approved for operation at other Port Authority airports, and with respect to all such engines as long as they are being operated and maintained in accordance with recognized standards, shall not be a violation of this paragraph (c).

(d) The Airport Operator shall not dispose of nor permit anyone to dispose of any aircraft waste material (whether liquid or solid) by means of the toilets, manholes, sanitary sewers, storm sewers or drainage systems at the Airport, unless such waste material is properly processed for disposal therein.

(e) The Airport Operator shall not do or permit to be done any act or thing upon the Airport or any part thereof which may constitute an extra hazardous condition so as to increase the risks normally attendant upon operations of the type covered by this Agreement. The Airport Operator shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Board of Fire Underwriters, the

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Fire Insurance Rating Organization of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the Airport or any part thereof, and the Airport Operator shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Airport Operator, make any and all structural and non-structural improvements, alterations, repairs or rebuilding of the Airport or any part thereof that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction.

Section 10. Assignment and Subcontracting

(a) The Airport Operator shall not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby, provided, however, that the Agreement may be assigned in its entirety to any successor in interest to the Airport Operator with or into which the Airport Operator may be merged or consolidated or to any entity

to whom the Airport Operator has sold all or substantially all of the assets of the Airport Operator, if the remaining or resultant corporation in the merger or consolidation or the purchaser in the sale has net worth and working capital at least equal to that of the Airport Operator immediately before the merger, consolidation or sale and provided, further, that such succeeding entity or purchaser executes and delivers to the Port Authority an instrument in a form satisfactory to the Port Authority assuming the obligations of the Airport Operator under the Agreement.

The limited right of assignment granted in this paragraph shall not be or be deemed to be a waiver of the prohibitions hereof with respect to any other assignment by the Airport Operator or as to any assignment by the entity or purchaser to whom the Airport Operator may have assigned pursuant hereto.

(b) During the term of this Agreement, the Port Authority shall not sell the Airport or any part thereof unless pursuant to law. The Port Authority may transfer, assign, mortgage or pledge this Agreement but such action shall in no way relieve the Port Authority of its obligations and responsibilities under this Agreement.

(c) ~~The Airport Operator shall not enter into any subcontract or other agreement for the use or occupancy of the Airport or any part thereof without the prior written consent of the Port Authority, which consent shall not be unreasonably withheld or delayed, and provided further that the Airport Operator and the party to such subcontract or other agreement shall execute and deliver to the Port Authority a consent agreement in the form specified by the Port Authority.~~ At the request of the Airport Operator, the Port Authority shall enter into an agreement of lease in the form attached hereto as Exhibit F and hereby made a part hereof, with said party to any such subcontract or other agreement as specified above covering such tract or tracts of land at the Airport, including any facilities thereon or to be constructed thereon, providing for a rental of One Dollar (\$1.00) and for such term and for such purposes as, subject to Section 2 hereof, may be

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contained in the subcontract or other agreement covering the same, it being agreed that any cost, expense or liability in entering into said agreement of lease or in complying with the terms thereof on the part of the Port Authority shall be at the sole cost, expense and risk of the Airport Operator, and the Airport Operator shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives from all claims and demands of the lessee under any such agreement of lease and of third persons arising or alleged to arise out of or in any way connected with any such agreement of lease except such claims or demands which are based upon lack of title or authority in the Port Authority.

(d) If the Airport Operator assigns, sells, conveys, transfers, mortgages, pledges or subcontracts in violation of paragraphs (a) or (c) of this Section or if the Airport or any part thereof is used by anybody other than the Airport Operator pursuant to written agreement with the Airport Operator in violation of paragraph (c) of this Section, the Port Authority may collect the fees from any assignee, subcontractor or anyone who claims a right to this Agreement or who uses the Airport or any part thereof and shall apply the net amount collected to the fees herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the agreements contained in paragraphs (a) and (c) of this Section nor an acceptance by the Port Authority of any such assignee, subcontractor, claimant or user as a person entitled to rights at the Airport, nor a release of the Airport Operator by the Port Authority from the further performance by the Airport Operator of the agreements contained herein.

Section 11. Condemnation

(a) In any action or other proceeding by any governmental agency or agencies for the taking for a public use of any interest in all or part of the Airport, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Airport Operator shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Airport Operator.

(b) In the event that all or any portion of the Airport is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Airport Operator terminate the Agreement with respect to all or such portion of the Airport so required. Such termination shall be effective on the date specified in the notice. The Airport Operator hereby agrees to deliver possession of all or such portion of the Airport so required upon the effective date of such termination. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by the Airport Operator nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be a breach of this Agreement or be made the basis of any claim by the Airport Operator against the Port Authority for damages, consequential or otherwise.

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(c) In the event that the taking or conveyance covers the entire Airport, or in the event that the Agreement is terminated with respect to the entire Airport pursuant to paragraph (b) of this Section, then this Agreement shall, as of the date possession is taken by such agency or agencies from the Port Authority, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the said date were the original date of expiration hereof.

(d) In the event that the taking or conveyance covers a part only of the Airport, or in the event that the Agreement is terminated pursuant to paragraph (b) of this Section with respect to a part only of the Airport, then the Agreement as to such part shall, as of the date possession thereof is taken by such agency or agencies from the Port Authority, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the term of the Agreement had on that date expired, and the basic fee shall be abated as herein provided.

(e) In the event a taking or conveyance as defined in paragraph (a) hereof or a termination as provided in paragraph (b) hereof occurs with respect to the Runway and Taxiway Construction, or any new building, any new structure or other improvements which may be erected or constructed by the Airport Operator or other user of the Airport as to whom the Airport Operator has assumed a reimbursement obligation, the Port Authority shall pay to the Airport Operator the unamortized payments by the Airport Operator, if there be any, for the Runway and Taxiway Construction and the unamortized capital investment, if there be any, of any such

new building, new structure or other improvements, said un-amortized payments and said unamortized capital investment to be determined in accordance with the provisions of paragraph (b) of Section 28 of the Agreement, provided, however, that item (iv) of subparagraph (2) of paragraph (b) of Section 28 shall for the purpose of this Section be "240" in lieu of "180", and provided, furthermore, that with respect to a taking or conveyance the sums payable to the Airport Operator as aforesaid shall be limited to the extent of the amounts covering the foregoing which shall have actually been paid to the Port Authority by the governmental agency or agencies, it being understood that the Airport Operator shall not have any claim whatsoever against the Port Authority by reason of insufficiency or claimed insufficiency of the amounts so paid to the Port Authority. Payment to the Airport Operator shall be made within forty-five (45) days after the receipt of the amounts pertaining thereto by the Port Authority from the governmental agency or agencies.

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Section 12. Construction by the Airport Operator

(a)(1) The Airport Operator may without the consent of the Port Authority do or cause to be done any item of work, which is reasonably estimated to cost no more than \$25,000.00. Notwithstanding the foregoing, the Airport Operator shall not make or cause to be made any of the foregoing which affects in any way the exterior of any structures or portion thereof, or the structural supporting frame, roof or structural part of any structure now or hereafter existing at the Airport, and the same shall be subject to the provisions of subparagraph (2) hereof. The Airport Operator shall within thirty (30) days after completion of any of the work covered by the first sentence of this subparagraph notify the Port Authority in writing of the performance of the same and giving a general description of the same. The Airport Operator shall with respect to the foregoing obtain comprehensive general liability insurance in such limits as shall be proper and adequate commensurate with the type of work to be performed and the hazards and risks pertaining thereto.

(2) Except as provided in subparagraph (1) above, the Airport Operator shall not do any work or permit others to do any work at the Airport without the prior written consent of the Port Authority.

The Airport Operator shall, prior to its submission to the Port Authority of any plans and specifications hereinafter provided for, submit to the Port Authority for its approval the Airport Operator's comprehensive plan for the development of the Airport including renderings, layouts and

preliminary functional plans. The Airport Operator shall keep said comprehensive plan up to date and shall submit to the Port Authority for its approval any amendment, revision or modification thereto.

Prior to the commencement of construction as to any work to be proposed to be done by the Airport Operator or others with the permission of the Airport Operator, the Airport Operator shall submit to the Port Authority for the Port Authority's consent, complete plans and specifications therefor. The Port Authority may refuse to grant consent, if any of such proposed work as set forth in said plans and specifications (all of which shall be in such detail as may reasonably permit the Port Authority to make a determination as to whether the requirements hereinafter referred to are met) shall:

(i) Be structurally unsound, unsafe, hazardous or improper for the use and occupancy for which it is designed, or

(ii) Not comply with the harmony of exterior architecture of similar existing or future construction at the Airport, or

(iii) Not be compatible with external and interior building materials and finishes of similar existing or future construction at the Airport, or

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(iv) Will not provide for sufficient clearances for taxiways, runways and apron areas, or

(v) Be designed for use for purposes other than those authorized under the Agreement, or

(vi) Set forth ground elevations or heights other than those that are consistent with the proper operation and use of the Airport, or

(vii) Not provide adequate circulation arteries for vehicular and pedestrian traffic and fire-fighting equipment, or

(viii) Interfere with the sight line between the Control Tower and the public landing area at the Airport, or

(ix) Not be at locations or not be oriented in accordance with the Airport Operator's approved comprehensive plan, or

(x) Be in violation or contravention of any other provisions and terms of this Agreement.

(b) All work shall be done in accordance with the following terms and conditions:

(1) The Airport Operator hereby assumes the risk of loss or damage to all the work prior to the completion thereof and the risk of loss or damage to all property of the Port Authority arising out of or in connection with the performance of the work. In the event of such loss or damage, the Airport Operator shall forthwith, repair, replace and make good the work and the property of the Port Authority without cost or expense to the Port Authority. The Airport Operator shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers and agents of the Port Authority) arising or alleged to arise out of the performance of the work and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from acts or omissions of the Airport Operator, of the Port Authority, or of third persons, or from acts of God or of the public enemy, or otherwise, excepting only claims and demands which result solely

from affirmative wilful acts done by the Port Authority, its Commissioners, officers, agents and employees subsequent to the commencement of the work.

(2) All work (other than that covered by subparagraph (1) of paragraph (a) of this Section) shall be done in accordance with drawings and specifications to be submitted to and approved by the Port Authority prior to the commencement

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of the work, and shall be subject to its inspection, and the Airport Operator shall re-do or replace at its own expense any work not done in accordance with the drawings and specifications submitted to and approved by the Port Authority.

(3) The Airport Operator shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Airport.

(4) With respect to work other than that covered by subparagraph (1) of paragraph (a) of this Section the Airport Operator shall procure and maintain comprehensive general liability insurance, including automotive, covering bodily-injury (including death) and property damage liability, which shall be in addition to all policies of insurance otherwise required by this Agreement, or, if the work is to be done by an independent contractor or others, the Airport Operator shall require such contractor or others to procure and maintain such insurance in the name of the contractor or others, and in any case, naming the Port Authority as an additional assured, said insurance not to contain any care, custody or control exclusions, and in such minimum limits as the Port Authority shall require in connection with similar work at other airports.

(5) As to any insurance required by this Section, such insurance shall be maintained in effect during the performance of the work and shall be subject to the applicable provisions of paragraph (c) of Section 8 hereof.

(c) As soon as any work shall have been completed, title thereto shall immediately and without the execution of any further instrument vest in the Port Authority and such work shall thereupon become and thereafter be part of the Airport. In the event any work (other than that covered by subparagraph (1) of paragraph (a) of this Section) is done without the approval

of the Port Authority, the Airport Operator shall either change the same to the satisfaction of the Port Authority or remove the same and restore the affected portion of the Airport to the condition thereof prior to the doing of said work upon receipt of notice from the Port Authority directing it so to do given at any time during the term of the Agreement or within sixty (60) days after expiration or termination of the Agreement, provided, however, that if the Airport Operator gives a specific notice to the Port Authority at any time during the term of the Agreement calling to the Port Authority's attention the fact that certain work has been inadvertently performed without the required approval of the Port Authority, the Port Authority's notice as aforesaid shall be given within sixty (60) days after receipt of the Airport Operator's notice. In the event of a failure on the part of the Airport Operator so to change or to restore and remove, the Port Authority may do so and the Airport Operator shall pay the cost thereof to the Port Authority on demand.

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(d) The Airport Operator shall be responsible for all contracts for work let by it or others, and for any loss or damages resulting therefrom, notwithstanding the same have been approved by the Port Authority and notwithstanding the incorporation therein of Port Authority recommendations. The Port Authority shall have no liability or obligations in connection with any contracts entered into by the Airport Operator or others for the work and the Airport Operator hereby releases and discharges the Port Authority, its Commissioners, officers, representatives and employees of and from any and all liability or claims for damages or losses of any kind whether legal or equitable, or from any action or cause of action arising or alleged to arise out of the performance of any work pursuant to such contracts. Any warranties contained in any such contract shall be for the benefit of the Port Authority as well as the Airport Operator or others.

(e) The word "work" as used in this Section shall be deemed to mean the construction, erection or installation of any buildings, structures, improvements, additions or fixtures (other than trade fixtures removable without material damage to the area affected) or any modifications, replacements, alterations or repairs made at the Airport by the Airport Operator or others pursuant to agreement with the Airport Operator, except repairs or replacements that only involve bringing structures, buildings, improvements or additions to prior existing condition as shown in Exhibit C.

Section 13. Additional Fees and Charges

If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Airport Operator has agreed to pay or reimburse the Port Authority for, or

if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure or neglect of the Airport Operator to perform or fulfill any one or more of the conditions, provisions or agreements contained in this Agreement or as a result of an act or omission of the Airport Operator contrary to the said conditions, provisions and agreements, the Airport Operator shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties.

Section 14. Rights of Entry Reserved

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Airport for the purpose of inspecting the same, for observing the performance by the Airport Operator of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement.

(b) Nothing in this Section shall or shall be construed to impose upon the Port Authority any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Port Authority shall not in any event be liable for any injury or damage to any property or to any person

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happening on or about the Airport nor for any injury or damage to the Airport nor to any property of the Airport Operator or of any other person located in or thereon other than those occasioned by the acts of the Port Authority.

Section 15. Termination by the Port Authority

(a) If any one or more of the following events shall occur, that is to say:

(1) The Airport Operator shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Airport Operator shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Airport Operator and shall not be dismissed within ninety (90) days after the filing thereof; or

(4) Except as provided in paragraph (a) of Section 10, the interest of the Airport Operator under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(5) Except as provided in paragraph (a) of Section 10, the Airport Operator shall, without the prior approval of the Port Authority, become a possessor or merged corporation in a merger or a constituent corporation in a consolidation, or a corporation in dissolution; or

(6) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Airport Operator, and such possession or control shall continue in effect for a period of sixty (60) days; or

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(7) The Airport Operator shall voluntarily abandon, desert or vacate the Airport or shall discontinue its operation or use of the Airport or, after exhausting or abandoning any right of further appeal, the Airport Operator shall be prevented for a period of sixty (60) days by action of any governmental agency from conducting its operation or use of the Airport, regardless of the fault of the Airport Operator; or

(8) Any lien shall be filed against the Airport because of any act or omission of the Airport Operator or any contractor of the Airport Operator and shall not be discharged within ninety (90) days after written notice of such lien to the Airport Operator; or

(9) The Airport Operator shall fail to pay the fees or to make any other payment required hereunder to the Port Authority for a period of fifteen (15) days following the receipt of written notice of such failure; or

(10) The Airport Operator shall fail to comply with the provisions of Section 40 of this Agreement promptly after notice by the Port Authority of non-compliance therewith; or

(11) The Airport Operator shall fail to keep, perform and observe each and every other promise, provision and agreement set forth in this Agreement, on its part to be kept, performed or observed, within thirty (30) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and, except for causes beyond its control, the Airport Operator shall have commenced to perform whatever may be required for fulfillment within twenty (20) days after receipt of notice and continues such performance without interruption);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by thirty (30) days' notice terminate the Agreement and the Airport Operator's rights hereunder, such termination to be effective upon the date specified in such notice.

(b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the commencement of the term of the Agreement, the Airport Operator shall not be entitled to enter upon the Airport, and the Port Authority, upon the occurrence of any such event, or at any time thereafter, during the continuance thereof, by ten (10) days' notice, may cancel the interest of the Airport Operator under this Agreement, such cancellation to be effective upon the date specified in such notice.

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(c) No acceptance by the Port Authority of fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms and conditions

hereof to be performed, kept or observed by the Airport Operator, shall be deemed a waiver of any right on the part of the Port Authority to terminate the Agreement. No waiver by the Port Authority of any default on the part of the Airport Operator in performance of any of the terms, provisions or conditions hereof to be performed, kept or observed by the Airport Operator shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, provisions and conditions.

(d) The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to and not in lieu of any and all rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Airport Operator, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies except that in the event of termination pursuant to the provision of subparagraph (7) of paragraph (a) hereof reading "after exhausting or abandoning any right of further appeal, the Airport Operator shall be prevented for a period of sixty (60) days by action of any governmental agency from conducting its operation or use of the Airport," without fault of the Airport Operator, the sole right of the Port Authority under this Section shall be a right of termination. In the event the Port Authority exercises its right to terminate this Agreement and the rights of the Airport Operator hereunder pursuant to any of the provisions of this Section, then it is hereby specifically agreed and understood that said exercise by the Port Authority of its right of termination shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination and for the period from the effective date of termination to the original expiration date of the Agreement, and this provision shall be deemed to survive the termination of the Agreement as aforesaid.

Section 16. Return of Airport

(a) The Airport Operator agrees to yield and deliver peaceably to the Port Authority possession of the Airport together with all buildings, structures, improvements, additions and other installations therein or thereon, on the day of the cessation of the Agreement, whether such cessation be by termination, expiration or otherwise, promptly and in good operating condition, the intention being that when the Airport is returned to the Port Authority the Airport shall be in first-class condition as an operating airport giving due consideration to normal wear and tear and shall be free and clear of any and all liens, debts, contracts, leases or encumbrances of whatsoever kind, nature and description.

(b) In the event of damage to or a partial or total destruction of the Airport, the Airport Operator within ten (10) days of the occurrence shall commence to remove all of the damaged property and all debris thereof from the Airport or from the portion thereof destroyed and thereafter shall diligently continue such removal, it being understood that the Airport Operator shall not commence to remove said damaged

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property or debris until the Port Authority and the insurance carrier have had a reasonable time and opportunity to examine the same. Unless required for the performance by the Airport Operator of its obligations hereunder the Airport Operator shall have the right at any time during the Agreement to remove, and, on or before the expiration or earlier termination of the Agreement, shall remove its equipment, removable fixtures and other personal property from the Airport repairing all damage caused by such removal. If the Airport Operator shall fail to remove its property on or before the termination or expiration of the term of the Agreement, or if the Airport Operator shall fail to remove damaged property or debris as hereinabove provided, the Port Authority may remove the Airport Operator's property and damaged property to a public warehouse for deposit or may retain the same in its own possession and with respect to debris may remove and dispose of the debris and in any event may sell any of the foregoing at public auction the proceeds of which shall be applied: first, to the expenses of removal including any necessary repair required thereby, and of storage and sale; second, to any sums owed by the Airport Operator to the Port Authority, with any balance remaining to be paid to the Airport Operator; if the expenses of such removal, repair, disposal, storage and sale shall exceed the proceeds of sale, the Airport Operator shall pay such excess to the Port Authority upon demand.

Section 17. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing (which shall include a telegram when delivered to the telegraph company) and all such notices and requests shall be telegraphed or personally delivered to the party or to the duly designated officer or representative of such party or delivered to an office or residence of such party, officer or representative during regular business hours, or delivered to the residence of such party, officer or representative or delivered to the Airport or forwarded to him or to the party at the office or residence address by registered mail. The Airport Operator shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its

Executive Director, as its officer or representative upon whom notices and requests may be served at the Port Authority office at 111 Eighth Avenue, New York 11, New York, and the Airport Operator designates its President as its respective officer or representative upon whom notices and requests may be served at his office in the Pan Am Building, New York, New York.

(b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address. If any notice is sent by telegraph, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice by the telegraph company to the addressee or at the address thereof.

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Section 18. Services by the Airport Operator

The principal purpose of the Port Authority in entering into this Agreement is to continue to have available the Airport for the use and benefit of the public. The Airport Operator hereby agrees that it will operate the Airport as a public airport, and perform the work and furnish the services required for such operation. The Airport Operator agrees that it will keep the Airport open for operations at all times, subject only to forces beyond its control, and will operate the Airport to meet the reasonable requirements of the users of the Airport, it being understood that this does not require that the landing areas will be open for use at all times or that any specific service will be available at all times. It is agreed, however, that nothing herein shall preclude the Airport Operator from subcontracting the performance of such work or services to others subject to Section 10, and provided that, the over-all administration and control of the Airport Operator's exercise of its rights and performance of its obligations shall remain in the Airport Operator. The enumeration of the following services to be performed by the Airport Operator shall not be deemed to limit the generality of the foregoing or the obligations of the Airport Operator set forth elsewhere in this Agreement.

(a) The Airport Operator shall furnish aviation fuel, aircraft maintenance and other aircraft services reasonably required to meet the needs of the users of the Airport.

(b) The Airport Operator shall furnish, operate and maintain all mechanical, plumbing, sprinkler, power, heating, steam, electrical, fuel, boiler, water, toilet, burglar alarm, communications and gas systems and all other systems as may be deemed necessary or appropriate for the Airport.

(c) The Airport Operator shall provide for janitorial, drainage, garbage, refuse, snow and ice removal services at the Airport.

(d) The Airport Operator shall provide appropriate personnel for necessary security and to meet emergencies at the Airport.

(e) The Airport Operator shall furnish, supply and maintain such equipment, furnishings, materials, tools, supplies, radio, fire extinguishing equipment and all other items and devices of any kind necessary or appropriate for the proper operation of the Airport.

(f) The Airport Operator shall arrange for all water, sewer, electricity, gas, telephone and all other utilities necessary at the Airport.

(g) The Airport Operator shall employ or arrange to have employed sufficient personnel (including licensed personnel as necessary) adequate and necessary to perform all of its services and obligations under this Agreement and shall provide all proper and necessary supervision.

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Section 19. Insurance

(a) The Airport Operator shall, during the term of this Agreement, insure and keep insured to the extent of 100% of the replacement value thereof, all buildings, structures, improvements, installations, facilities, and fixtures now or in the future located on the Airport against such hazards and risks as may now or in the future be included under the standard form of fire insurance policy of the State of New Jersey and also against damage or loss by windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke, under the standard form of fire insurance policy of New Jersey and the form of extended coverage endorsement prescribed as of the effective date of the said insurance by the rating organization having jurisdiction, and also covering nuclear property losses and contamination hazards and risks and boiler and machinery hazards and risks in a separate insurance policy or policies or as an additional coverage endorsement to the aforesaid policies in the form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction, and the Airport Operator shall furthermore provide additional insurance covering any other property risk that the Port Authority may at any time during the term of this Agreement cover by carrier or self-insurance covered by appropriate reserves at the Port Authority's other airports upon written notice to the Airport Operator to such effect.

The aforesaid insurance coverages and renewals thereof shall insure the Port Authority and the Airport Operator as their interests may appear and shall provide that the loss, if any, shall be adjusted with the Airport Operator and the Port Authority and shall be payable to the Port Authority or the Airport Operator as their interests may appear.

In the event the Airport or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section, the Airport Operator shall promptly notify the Port Authority of such casualty and shall thereafter furnish to the Port Authority such information and data as shall enable the parties to adjust the loss.

(b) Fifteen (15) days prior to the commencement of the term of this Agreement, the policies or certificates representing said insurance shall be delivered by the Airport Operator to the Port Authority and each policy or certificate delivered shall bear an endorsement obligating the insurance company to furnish the Port Authority fifteen (15) days' advance notice of the cancellation of the insurance evidenced by said policy or certificates or of any changes or endorsements which may be made thereon. Renewal policies or certificates shall be delivered to the Port Authority at least fifteen (15) days before the expiration of the insurance which such policies are to renew.

The aforesaid insurance shall be written by a company or companies approved by the Port Authority, the Port Authority agreeing not to withhold its approval unreasonably.

(c) To the extent that any loss is recouped by actual payment to the Port Authority of the proceeds of the insurance herein referred to above, the Port Authority will out of such proceeds pay to the Airport Operator its costs of rebuilding or repairing the portion or all of the Airport which

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has been damaged or destroyed. Such payment will be made by the Port Authority to the Airport Operator in installments if requested by the Airport Operator and as work progresses provided that as to each request for payment the Airport Operator shall certify by a responsible officer thereof that the amounts requested are due and payable to its contractor for work completed. Upon completion of all the work, the Airport Operator shall certify by a responsible officer that such rebuilding and repairs have been completed, that all costs in connection therewith have been paid by the Airport Operator and said costs are fair and reasonable and said certification shall also include an itemization of costs. The provisions of subdivisions (4) and (5) of paragraph (b) of Section 28 of the Agreement

shall apply to the determination and auditing of the costs of the Airport Operator hereunder. Nothing herein contained shall be deemed to release the Airport Operator from any of its repair, maintenance or rebuilding obligations under the Agreement. If the proceeds of any such insurance paid to the Port Authority exceed the Airport Operator's costs of rebuilding or repair, the excess of such proceeds shall be retained by the Port Authority.

(d) If there is damage or destruction to the property covered by insurance covered under this Section and the Airport Operator does not promptly commence to repair, rebuild or replace pursuant to the provisions of this Agreement, then the Port Authority may apply such proceeds of such insurance towards such repair, replacement and rebuilding, but no such application shall relieve the Airport Operator of its obligations under this Agreement, or the Port Authority in its discretion may elect to relieve the Airport Operator of its obligations under this Agreement to repair, replace and rebuild the damaged or destroyed property, and not to have said property repaired, replaced or rebuilt and in such event the entire proceeds of the insurance shall be retained by the Port Authority.

If, moreover, there is damage or destruction to the property covered under this Section which occurs within the last three years of the term of the Agreement, the obligations of the Airport Operator to repair, replace or rebuild such damaged or destroyed property shall be discharged (provided that the insurance applicable thereto has been maintained in full force and effect) and the entire proceeds of the insurance applicable thereto shall be retained by the Port Authority.

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Section 20. Business Development and Records

In connection with its operation and use of the Airport, the Airport Operator shall,

(1) Take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder;

(2) Set up and thereafter continually maintain during the term of this Agreement, such a system of books, records and accounts as may be adequate and appropriate for the accurate recording of all transactions at, through or in anywise connected with the Airport, including but not limited to the (a) recording of all arrivals and departures of aircraft, the times and dates thereof, the type and category of aircraft and the charges incurred, (b) the rentals, fees, revenues and other payments of whatever kind or nature paid or

payable to the Airport Operator, (c) all matters of any kind arising out of or in connection with the Airport Operator's services and operation and use of the Airport and its services thereat, and (d) such additional information as the Port Authority may from time to time require provided, however, that the Airport Operator shall have no obligation to supply the information covered by this item (d) if substantial costs will be incurred. During the term of this Agreement the aforesaid records shall be retained for a period of four years and any records which are being so retained at the expiration or earlier termination of the term of the Agreement shall be retained for a further period of two years from the date of said expiration or earlier termination. The Airport Operator shall utilize such recording devices and equipment as may be necessary and appropriate to enable the Airport Operator to keep accurate records as hereinabove mentioned. The foregoing system shall be in accordance with accepted accounting practice and all records, books and accounts shall be kept at all times within the Port of New York District. The Airport Operator shall permit, in ordinary business hours during such time, the examination and audit by the officers, employees, agents and representatives of the Port Authority of such records, books and accounts, devices and equipment.

(3) At the time of the rendering of the statement required under Section 5 B.(2) hereof, the Airport Operator will also furnish to the Port Authority a statement covering all transactions and matters as set forth in subparagraph (2) hereof and all information as may be required thereunder and utilizing such forms as shall be mutually agreed to by the Port Authority and the Airport Operator, provided, however, that the information required under item (a) of subparagraph (2) hereof shall also be set forth in such daily forms as shall be prescribed from time to time by the Port Authority.

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Section 21. Patents and Trademarks

The Airport Operator represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in anywise connected with this Agreement, except that the foregoing shall not apply to the equipment listed in Exhibit D. The Airport Operator agrees to save and hold harmless the Port Authority, its Commissioners, officers, employees,

agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Airport Operator under this Agreement, except the foregoing shall not apply to the equipment listed in Exhibit D.

Section 22. Construction by the Port Authority

(a) Prior to the execution of this Agreement by the Port Authority and the Airport Operator, the parties have entered into a letter agreement, dated July 28, 1965, which letter agreement was further supplemented by letters, dated August 31, 1965 and October 11, 1965, under which the Port Authority agreed to render certain services to the Airport Operator with respect to certain proposed work at the Airport as specified therein. It is agreed that the provisions of this Section shall supersede and take the place of said letter agreement with respect to the work to be performed thereunder in the supplements, dated August 31, 1965 and October 11, 1965, to said letter agreement dated July 28, 1965. It is hereby agreed that the Port Authority shall design and thereafter construct or cause to be constructed the work generally described as follows and more specifically as shown in the drawings and specifications annexed hereto, hereby made a part hereof and designated Exhibit G, and as shall be shown in the drawings and specifications to hereafter be prepared by the Port Authority covering construction not covered by Exhibit G which shall be subject to the approval of the Airport Operator, all of which is herein referred to as the "Runway and Taxiway Construction":

- (i) The extension of Runways 6-24 and 1-19;
- (ii) The widening of Runways 6-24 and 1-19;
- (iii) The installation of high intensity edge lights along Runways 6-24 and 1-19;
- (iv) The relocation of glide slope navigational aids with respect to Runway 6-24;
- (v) The dismantling and reinstallation of the approach light system with respect to Runway 6-24;
- (vi) The extension and construction of taxiways to the southwest and northeast ends of Runway 6-24, including centerline lighting;
- (vii) The construction of a new taxiway parallel and to the west of Runway 1-19 including centerline lighting;

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- (viii) The relocation of telephone lines and 26 KV and 13 KV transmission lines;
- (ix) The relocation of the middle marker;
- (x) The marking of runways and taxiways in accordance with FAA standards;
- (xi) The construction of an electrical switch house;
- (xii) The installation of centerline lighting along existing Taxiways B and C and the present Runway 14-32 which will be converted to a Taxiway; and
- (xiii) All other necessary work in connection with the foregoing items, including without limitation thereto, all borings, surveys, route marker signs, obstruction lights (on and off the Airport) and material inspections.

(b) In order to expedite the Runway and Taxiway Construction, the parties have agreed to enter into this Agreement at a time when the availability of materials and labor cannot be determined and at a time prior to the completion of all the drawings and specifications covering the Runway and Taxiway Construction. The Port Authority shall have the right to effectuate changes in the design and construction and to substitute materials and methods other than as may be set forth in Exhibit G and the other drawings and specifications, and otherwise to take all steps which in its opinion are necessary or desirable in order to perform the Runway and Taxiway Construction.

(c) The Runway and Taxiway Construction or portions thereof may be performed by independent contractors or by the Port Authority using its own forces or by a combination of the foregoing. Any contracts of the Port Authority for said construction may be made by negotiation or may be awarded after competitive bidding (including awards to other than the lowest bidder) or may be entered into on the basis of a combination of the foregoing or on some other basis.

(d) The Airport Operator hereby agrees to pay to the Port Authority the Port Authority's cost of the Runway and Taxiway Construction including costs incurred prior to the effective date of this Agreement which cost shall be the sum of the following:

- (i) Payments to independent contractors (including the Federal Aviation Administration, the New Jersey Bell Telephone Company and the Public Service Gas and Electric Company) engaged or retained by the Port Authority for the actual construction of the Runway and Taxiway Construction;
- (ii) The cost of materials and supplies used in the actual construction of the Runway and Taxiway Construction;

(iii) The amount of any valid claim paid by the Port Authority on account of or arising out of the operations of the independent contractors (including the Federal Aviation Administration, the New Jersey Bell Telephone Company and the Public Service Gas and Electric Company) engaged or retained by the Port Authority for the actual construction of the Runway and Taxiway Construction;

(iv) Costs of any performance bond or bonds in connection with the actual construction of the Runway and Taxiway Construction;

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(v) Payments to independent architects, planners, designers, engineers and all other experts (including the Federal Aviation Administration) engaged or retained by the Port Authority in connection with the Runway and Taxiway Construction other than in the actual construction of the same;

(vi) Payments, if any are required, to the Federal Aviation Administration in connection with any other aspect of the Runway and Taxiway Construction;

(vii) The salaries and other payroll costs (as charged under the Port Authority's normal accounting practice) of Port Authority employees actually working on any aspect of the Runway and Taxiway Construction;

(viii) All other direct costs to the Port Authority in connection with any aspect of the Runway and Taxiway Construction (as charged under the Port Authority's normal accounting practice);

(ix) An amount equal to 40% of items (v) and (vi) above and an amount equal to 80% of items (vii) and (viii) above.

(e) Upon substantial completion of the Runway and Taxiway Construction, and upon substantial payment by the Port Authority of the cost thereof, the Port Authority shall deliver to the Airport Operator a statement to such effect certified by the Port Authority's Comptroller and the amount set forth in said statement shall be due and payable by the Airport Operator within twenty (20) days after delivery of such statement. In the event, however, that further payments are made by the Port Authority in connection with finally pay-

ing all of the amounts which constitute the cost of the Runway and Taxiway Construction, additional statements shall be given from time to time to the Airport Operator certified by the Comptroller of the Port Authority and the amount set forth in each such statement shall be due and payable by the Airport Operator within twenty (20) days after the receipt of such statement.

(f) If the Airport Operator has heretofore paid to the Port Authority any amounts pursuant to the supplements dated August 31, 1965 and October 11, 1965 to the letter agreement dated July 28, 1965, the amount of said payment shall be credited against the amounts payable by the Airport Operator for the cost of Runway and Taxiway Construction.

If and to the extent that the Port Authority receives any grant of federal funds for the Runway and Taxiway Construction pursuant to the provisions of paragraph (b) of Section 40 hereof, the amount of said grant of federal funds actually received shall be credited against the amounts payable by the Airport Operator pursuant to this Section. If the Airport Operator has paid the Port Authority the amounts due it as provided hereunder prior to the Port Authority's

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receipt of such grant, the amount of said grant of federal funds actually received (together with any interest thereon actually received by the Port Authority) shall be credited against the Airport Operator's other payment obligations under this Agreement as they fall due. It is hereby specifically understood and agreed that the obligations of the Port Authority hereunder to perform the Runway and Taxiway Construction and the obligations of the Airport Operator to pay the cost thereof shall not be or be deemed to be affected by the failure of the Port Authority to receive any grant of federal funds with respect thereto.

(g) During the period of the construction of the Runway and Taxiway Construction and prior to the delivery to the Airport Operator of the statement of costs as set forth in the first sentence of paragraph (e) hereof, the Airport Operator shall pay an additional amount each month equal to one-half ($1/2$) of one percent (1%) of the actual cumulative amount of the cost of the Runway and Taxiway Construction as defined in paragraph (d) hereof, less the amount of money paid to the Port Authority by the Airport Operator as mentioned in the first subparagraph of paragraph (f) hereof prior to the commencement of the aforesaid period of construction. Such additional payments shall commence on the first day of the calendar month following the commencement of the construction of the Runway and Taxiway Construction and shall be payable on

the first day of each and every month thereafter up to the date of the payment by the Airport Operator of the amount set forth in the statement provided for in the first sentence of paragraph (e) hereof. The amount to be paid by the Airport Operator each month shall be separately computed on the basis of the actual cumulative amount of the Port Authority's cost of the Runway and Taxiway Construction determined upon the then latest report to the Airport Operator of such cost, which reports certified by the Port Authority's Comptroller shall be given from time to time.

(h) When the Runway and Taxiway Construction is substantially completed, the Port Authority shall deliver to the Airport Operator a certificate to such effect. The date specified in such certificate or the date of delivery of such certificate, whichever is later, shall constitute the "Completion Date" for the purpose of paragraph (b) (1) of Section 28 hereof and any other provision of the Agreement pertaining thereto.

(i) The Airport Operator understands and agrees that the Runway and Taxiway Construction will be started by the Port Authority prior to the commencement date of the term of this Agreement, provided that no such construction will commence as to either the Runway 6-24 portion or the Runway 1-19 portion thereof until the Airport Operator shall have requested the Port Authority to apply to the Federal Aviation Administration for a grant of federal funds covering the costs of such portion pursuant to paragraph (b) of Section 40 and unless and until as to ~~either~~ such portion the Port Authority and the Federal Aviation Administration have executed a Grant Agreement in the form set forth in Exhibit L.

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Section 23. Existing Agreements

~~This Agreement is entered into subject to the leases, permits, contracts and agreements listed on a schedule annexed hereto, hereby made a part hereof and marked "Exhibit H" and subject to all new leases, permits, contracts and agreements as may be entered into by the Port Authority prior to the commencement of the term of this Agreement as hereinafter provided, all of the same being hereinafter in this Section referred to as "existing agreements" and the Port Authority hereby assigns and transfers to the Airport Operator, as of the commencement of the term of this Agreement, all its right, title and interest in and to the existing agreements, together with any and all security deposits and prepaid rents thereunder (to the extent not theretofore applied), if any, and the Airport Operator hereby assumes all obligations of the Port Authority thereunder as if the Airport Operator were an original signatory thereto arising on and after the commencement of the term hereof; provided, however, as to the lease agreements among the existing agreements, the assign-~~

ment thereof to the Airport Operator shall not create, or be construed to create a landlord and tenant relationship between the Airport Operator and the lessee, nor to grant or convey to the Airport Operator any interest in the land covered by such lease agreements.

The Port Authority shall have the right to enter into leases, permits, contracts and agreements other than those listed on Exhibit H and the Port Authority shall have the right to amend or supplement any of the existing agreements prior to the commencement of the term of this Agreement, provided that no such action shall be taken by the Port Authority without the consent of the Airport Operator, unless said amendments or supplements or said new leases, permits, contracts or agreements shall be terminable or cancellable without cause by the Port Authority on thirty days' (30) notice. The Port Authority shall have the right to terminate such of the existing agreements prior to the commencement date of the term of this Agreement which have a 30-day termination or revocation clause and the Port Authority shall have the right to terminate any existing agreement which affects other airports of the Port Authority as well as Teterboro Airport. The Port Authority shall from time to time by written notice to the Airport Operator list all such new leases, permits, contracts and agreements, supplements and amendments and all existing agreements terminated and Exhibit H shall be deemed amended accordingly.

The assignment hereunder does not include any and all claims, rights or causes of action existing in favor of the Port Authority against any person or persons, firm or corporation arising out of any of the existing agreements for the payment of rents, fees, charges or other monies payable thereunder which are due and payable prior to the commencement of the term of this Agreement or which are due and payable subsequent to the said commencement date but cover activities, operations, occupancy, services, or other operations which have occurred or been performed prior to the commencement date of the term of this Agreement but are payable thereafter. With respect to any existing agreements which provide for payments in such a manner so that the precise amount due cannot be determined until the end of any fixed periods as may be specified thereunder, a proper apportionment shall be made between the Airport Operator and the Port Authority as to the amounts due to the Port Authority and the Airport Operator. The Airport Operator shall be responsible for and shall indemnify and hold harmless the Port Authority from and against all claims and demands of the parties to said existing agreements arising out of the performance or non-performance thereof on and after the commencement of the term of this Agreement. The Port Authority shall be responsible for and shall indemnify and hold harmless the Airport Operator from and against all claims and demands of the parties to said existing agreements arising out of the performance or non-performance thereof prior to the commencement of the term of this Agreement.

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The Port Authority has heretofore entered into an agreement of lease with The Bendix Corporation made as of March 15, 1967 bearing Port Authority File No. AT-223. The Airport

Operator hereby agrees to pay to the Port Authority upon the commencement of the term hereunder such payments as may have been made by the Port Authority to The Bendix Corporation or to Bendix's architects, contractors or suppliers under Section 5 of said Lease and the costs if any paid by the Port Authority under Section 6(b)(ii) of said Lease, all as of the date of the commencement of the term hereof, provided, however, that if as of said date Bendix has paid to the Port Authority any installments of construction rental pursuant to Section 6(b) of said Lease, the amount of such payments constituting amortization shall be deducted from the amount to be paid to the Port Authority by the Airport Operator.

Notwithstanding the assignment and transfer of the existing agreements to the Airport Operator as hereinabove provided, it is hereby expressly understood and agreed that the Port Authority shall be entitled to all the compensation, awards, consideration and rentals free of any claim or right of the Airport Operator made or paid by any governmental agency or agencies for a taking for a public use or in case of any deed, lease or conveyance in lieu thereof of any interest in whole or part of the premises under any existing agreements or any structures, buildings, improvements, fixtures erected thereon or of any part of the Airport as set forth in the provisions of the existing agreements covering the same, but in the event any of such existing agreements provide for any payments with respect to any such taking for a public use or any deed, lease or conveyance in lieu thereof to any lessee thereunder, said obligation of payment shall be discharged by the Port Authority and not by the Airport Operator. Furthermore, in the event of the termination of this Agreement prior to the expiration of any of the existing agreements, the Airport Operator shall assign and transfer back to the Port Authority as of the effective date of said termination, all of the Airport Operator's right, title and interest in and to the existing agreements, together with any and all security deposits and prepaid rents thereunder (to the extent not theretofore applied).

Section 24. Costs, Expenses, Taxes and Liabilities

(a) The Airport Operator shall and it does hereby assume and shall and does hereby relieve the Port Authority from and against all responsibility for all costs, expenses, damages, judgments, claims, demands, actions and causes of action, taxes, noise costs (as hereinafter defined) and monetary liabilities and obligations of any kind or nature whatsoever arising from and after the commencement of the term of this Agreement and whether or not any of the foregoing shall be directed, imposed, assessed, levied or charged to the Port Authority or to the Airport Operator or to both of them in connection with the Airport or the operation thereof.

(b) Without limiting the foregoing, taxes shall be deemed to include but not be limited to real property taxes.

imposed upon the Airport or any part thereof or any improvement thereon, personal property taxes of any kind whatsoever, excise taxes, license fees, permit fees, assessments, assessments for benefits, fines and penalties, and any other tax in whatever form

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it may take or designation it may bear and all payments in lieu of taxes (as hereinafter defined) whether any of such taxes are now in existence and in effect or are now imposed, assessed or levied or may subsequently during the term of the Agreement be established, created, developed, imposed, assessed, levied or charged.

(c) The Airport Operator recognizes that the Port Authority has entered into voluntary agreements with certain municipalities (including Bergen County) wherein the Airport is located pursuant to which the Port Authority agreed to pay a fair and reasonable sum annually to each such municipality (including Bergen County) in connection with Airport property owned by the Port Authority, not in excess of the sums last paid as taxes upon such property prior to the time of its acquisition by the Port Authority, and the Airport Operator further recognizes and agrees that the Port Authority shall in its sole discretion have the right to continue during the term of this Agreement to enter into such voluntary agreements and to pay such fair and reasonable sums annually. All payments made or to be made by the Port Authority pursuant to the foregoing are herein referred to as "payments in lieu of taxes." Notwithstanding the provisions of paragraphs (a) and (b) hereof, it is hereby understood that the Airport Operator shall not be obligated to reimburse the Port Authority for any payments in lieu of taxes in excess of \$41,600 per annum.

(d) Without limiting the foregoing, noise costs shall be deemed to include but not be limited to any and all costs, liabilities, obligations, damages and expenses arising or alleged to arise out of any claim or demand resulting from or alleged to result from noise from or in connection with the operation or use of the Airport, or from flights of aircraft to or from the Airport, or from aircraft thereon, or from any alleged trespasses, nuisances, takings or any other cause of action and from any liability or responsibility imposed on an airport owner or operator in connection with any of the foregoing, which may be assessed, levied, incurred, charged or imposed upon the Port Authority or the Airport Operator or both and any and all monies paid or expenses incurred, or judgments paid or settlements made with any third person in connection therewith, including all costs and expenses of litigation or settlement and reasonable attorneys' fees. The parties shall notify each other of any such claim which may be directed to them and shall consult as to the circumstances thereof. Settlements will be made and relief or remedial solutions taken

only after full consultation and discussion between the parties and with the approval of the Airport Operator. The Port Authority may elect to defend on behalf of both parties against any such claim, in which event it shall use its best efforts in the defense of the same for the Airport Operator. The Airport Operator may impose, from time to time, such noise abatement procedures and regulations as it shall consider to be required for the proper operation of the Airport, having due regard for the effect of noise on neighboring areas and the efficient and economic use of the Airport as a public airport for operations as permitted by Section 2 hereof; provided, however, that such procedures and regulations at the commencement of the term of this Agreement shall be those the Port Authority has in effect immediately prior to the commencement of such term, and that such procedures and regulations shall at all times be such as will not permit any operation or activity producing greater or more objectionable noise than would be permitted under the noise abatement procedures and regulations in effect at any other airport operated by the Port Authority in the Port of New York District.

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(e) The Airport Operator shall indemnify and save harmless the Port Authority, its Commissioners, officers, agents and employees, from and against all of the foregoing and if so directed, the Airport Operator shall defend against any claims, in which event it shall not without obtaining express advance permission from the General Counsel of the Port Authority raise any defense, involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(f) The obligations of the Airport Operator as set forth in this Section is not to be construed as a submission by the Port Authority to the application to itself or to the Airport Operator as a matter of law of any obligations or liabilities to third persons for taxes or noise or costs in connection therewith. Nothing contained in this Section shall be or be construed as intended to benefit any third person.

(g) Nothing herein contained or expressed elsewhere in this Agreement is intended or shall be construed to limit any right of the Port Authority itself to contest by litigation or otherwise any claim asserted against it in connection with the Airport or the operation thereof or any claim in any way affecting the Port Authority's rights or interests as owner of the Airport, or against the Airport Operator with respect to matters covered under paragraph (d) above. The Airport Operator shall not without obtaining express advance permission from the General Counsel of the Port Authority raise any defense, involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, the governmental nature of the Port Authority or the provisions of

any statutes respecting suits against the Port Authority. The parties will notify each other of any such claim asserted against either of them or otherwise brought to their attention and the parties will cooperate in the defense against any such claim.

Section 25. Termination by the Airport Operator

(a) The Airport Operator shall have the right to terminate this Agreement effective at the end of the fifth year of the term hereof by giving twelve months prior written notice thereof to the Port Authority but said right of termination is limited to the event and only to the event that the gross receipts of the Airport Operator during the third year of the term of the Agreement (the third annual period) are less than Five Million Dollars and No Cents (\$5,000,000.00); and provided, however, that the Airport Operator shall not, either on the date of giving its notice or on the effective date of termination, be in default under any of the terms and conditions of this Agreement to be performed, kept or observed by the Airport Operator. In the event of termination pursuant to this Section the Agreement shall cease and expire at the end of the fifth year of the term as if said date were the date originally set forth herein for the expiration of the Agreement.

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(b)(1) In the event that the Airport Operator has prior to the end of the third year of the term of the Agreement waived its termination right granted in paragraph (a) hereof in accordance with paragraph (a) of Section 40, and in the event that the Port Authority has not received the grant of federal funds covered by paragraph (a) of Section 40 by the end of the fourth year of the term of the Agreement, then the right of the Airport Operator to terminate as set forth in paragraph (a) hereof will be reinstated but three months' prior written notice shall be given in lieu of the twelve months' notice as set forth therein, provided, however, that in no event shall said right of termination be reinstated if the Port Authority has entered into a Grant Agreement for the grant of federal funds covered by paragraph (b) of Section 40 hereof.

(2) In the event that the Airport Operator has prior to the end of the third year of the term of the Agreement waived its termination right granted in paragraph (a) hereof in accordance with paragraph (b) of Section 40, and in the event that the Port Authority has not entered into the Grant Agreement covered by paragraph (b) of Section 40 by the end of the fourth year of the term of the Agreement and the Airport Operator shall have prior thereto served a written notice upon the Port Authority withdrawing its request to the Port Authority to apply for such grant of federal funds, then the right of the Airport Operator to terminate as set forth in paragraph (a) hereof will be reinstated but three months' prior written notice shall be given in lieu of the twelve months'

notice as set forth therein, provided, however, that in no event shall said right of termination be reinstated if the Port Authority has entered into a Grant Agreement for the grant of federal funds covered by paragraph (a) of Section 40 hereof.


Section 26. Services Furnished

(a) ~~One of the purposes of the Port Authority in the making of this Agreement is to make available at the Airport the services which the Airport Operator is authorized to render hereunder and the Airport Operator agrees to furnish such services as are reasonably required to meet the demands therefor at the Airport. The Airport Operator agrees that it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for all such services.~~



(b) The Airport Operator agrees that it will not enter into continuing contracts or arrangements with third parties for the furnishing of services by the Airport Operator if any such contract or arrangement will have the effect of utilizing to an unreasonable extent the capacity of the Airport Operator for furnishing such services generally.

(c) The Airport Operator agrees that it will not enter into any agreement or understanding, relating to services at the Airport whether or not binding, with any person, firm, association, corporation or other entity, which will have the effect of fixing rates, of lessening or preventing competition, or creating a monopoly.



(d) Services shall be deemed to include products, items and articles sold, leased, licensed or available for usage.

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(e) Without limiting the generality of any provision of this Agreement it is understood that the use of the Airport for helicopter flights, whether scheduled or not, and all activities, services and accommodations at or from the Airport in connection with said helicopter flights, will at all times be conducted and provided on a fair, equal and not unjustly discriminatory basis with respect to all persons wishing to use any of the same and to all airlines wishing to participate in such arrangements, activities and accommodations if any such airline operates within the Port of New York District. Further, the Airport Operator will insert and enforce appropriate provisions to such effect in any agreements it may enter into or arrangements it may make with any operator or operators of said helicopter flights.

It is understood furthermore that the sale of passage and service for scheduled flights at other airports when

in conjunction with the sale of passage on helicopters or otherwise as referred to above will at all times be available on a fair, equal and not unjustly discriminatory basis to all airlines wishing to participate in such arrangements and if any such airline operates within the Port of New York District.

The reference above to helicopter or helicopters shall also include other newly designed aircraft performing like functions.

Section 27. Relationship of the Parties

This Agreement does not constitute the Airport Operator the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor a joint venture is hereby created, notwithstanding that all or a portion of the fees to be paid hereunder may be determined by gross receipts from the operations of the Airport Operator hereunder. The Airport Operator shall operate the Airport, use the Airport and perform all services hereunder as an independent contractor and its officers and employees shall not be or be deemed to be agents, servants or employees of the Port Authority. However, the Airport Operator shall perform its operations and discharge its obligations in full compliance with all the requirements of this Agreement and will operate the Airport as a public airport.

Section 28. Additional Right of Termination by the Airport Operator

(a) If there is any change during the term of this Agreement in existing tax immunity statutes which results in any substantial increase in any costs to the Airport Operator for payment as provided in Section 24 hereof of real property taxes imposed upon the Airport or any substantial part thereof or substantial improvements thereon the Airport Operator shall have the right to terminate this Agreement by giving three (3) months' prior written notice thereof to the Port Authority. Said right of termination may not be exercised if the Grant Agreements referred to in paragraphs (a) and (b) of Section 40 hereof do not provide for termination by the Port Authority of said Grant Agreements upon repayment of federal funds granted as therein provided in the event of termination by the Airport Operator as provided in this paragraph (a). Said right of termination shall not be effective if the Airport Operator shall,

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either on the date of giving its notice or on the effective date of termination, be in default under any of the terms, provisions and conditions of this Agreement to be performed, kept or observed by the Airport Operator. In the event of termination pursuant to this Section, the Agreement shall cease and expire on the effective date stated in the said notice as if said date were the date originally set forth herein for the expiration of the Agreement.

(b) In the event of the termination of this Agreement by the Airport Operator pursuant to the provisions of paragraph (a) hereof, the Port Authority shall, within ninety (90) days after such termination, pay to the Airport Operator the unamortized payments by the Airport Operator, if there be any, for the Runway and Taxiway Construction and the unamortized capital investment, if there be any, of any new building, new structure or other improvements (which as used in this Section 28 and in paragraph (e) of Section 11 shall mean improvements of the type covered by subparagraph (2) of paragraph (a) of Section 12 hereof) which may be erected or constructed by the Airport Operator or other users of the Airport, said unamortized payments and said unamortized capital investment to be determined as follows and the foregoing obligation to be limited to, be subject to and be in accordance with the following:

(1)(i) The actual payments received by the Port Authority from the Airport Operator for the Runway and Taxiway Construction pursuant to the provisions of paragraph (d) of Section 22 hereof (excluding credits with respect to grants of federal funds pertaining thereto) shall be amortized by multiplying the same by a fraction, the numerator of which shall be 180 minus the number of whole calendar months from the Completion Date as set forth in paragraph (h) of Section 22 to the effective date of termination by the Airport Operator pursuant to paragraph (a) hereof, and the denominator of which shall be 180.

(ii) The capital investment of any new building, or any new structure or other improvements which may be erected at the Airport by the Airport Operator with the approval of the Port Authority as required under Section 12 hereof shall be amortized by multiplying the same by a fraction, the numerator of which shall be the number of whole calendar months between the effective date of termination by the Airport Operator pursuant to paragraph (a) hereof and the end of the amortization period of each such building or structure or other improvements as hereinafter set forth, and the denominator of which shall be the total said amortization period of such new building, new structure or other improvements.

(iii) The capital investment of any new building or any new structure or other improvements which may be erected at the Airport by other users of the Airport with the approval of the Port Authority as required under Section 12 hereof and as to any of which the Airport Operator has assumed a reimbursement obligation with said user, shall be amortized by multiplying the same by a fraction, the numerator of which shall be the number of whole calendar months between the effective date of termination by the Airport Operator pursuant to paragraph (a) hereof and the end of the amortization period of each such new building, new structure or other improvements as hereinafter set forth, and the denominator of which shall be the total said amortization period of such building, structure or other improvements.

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(2) Except as may otherwise be agreed to by the parties prior to the commencement of construction, the amortization period with respect to each such new structure, new building or such other improvements which shall commence as of the date of substantial completion of the same shall be computed in whole calendar months, and shall be (i) the useful life of the new building, the new structure or other improvements as determined under sound accounting practice, (ii) the period from the substantial completion of the new building, new structure or other improvements to the expiration date of this Agreement, or (iii) in addition to the foregoing as to a new building, new structure or other improvements erected by any user of the Airport the amortization period agreed to between the Airport Operator and said user, or (iv) 180, whichever is the least of any of the above.

(3) Port Authority approval for the construction of any such new building, new structure or other improvements by the Airport Operator or by other users of the Airport, as to whom the Airport Operator has assumed a reimbursement obligation, as required by Section 12 hereof (including the estimated overall cost thereof) shall not be unreasonably withheld.

(4) For the purposes of this Agreement and to the extent permitted by sound accounting practice, the capital investment of the Airport Operator or the user of the Airport for each such new building, new structure or other improvements shall mean the sum of the following items:

(i) payments to independent contractors and suppliers of material, excluding any payments for engineering, architectural planning or designing services, engaged or retained by the Airport Operator or other users for the actual construction of the work including site preparation and bringing utilities to the site, and

(ii) an amount equal to 20% of item (i) above.

(5) A statement of the capital investment and detailing all of the foregoing including copies of the invoices and contracts and certified by a responsible officer of the Airport Operator shall be delivered by the Airport Operator to the Port Authority not later than sixty (60) days after completion of any construction, and the Airport Operator shall permit and shall require such users to permit the Port Authority, by its agents, employees or representatives at all reasonable times prior to a final settlement or determination of capital investment, to examine and audit the records and books of the Airport Operator or of any user of the Airport which pertain to the capital investment and the Airport Operator agrees to keep such records and books of account and to

require such user of the Airport to keep its records and books of account within the Port of New York District during such time. If in the certified statement, there is included any item of cost of expense as having been incurred, which in the opinion of the Port Authority was not so incurred, or which in the opinion of the Port Authority if so incurred, was not a cost or expense properly chargeable to the capital investment under sound accounting practice, then, within 180 days after completion of its examination and audit of such statement the Port Authority shall give written notice to the Airport Operator stating its objection to such item and the grounds therefor. If the Airport Operator considers that the Port

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Authority's objection is wrongly taken, the Airport Operator may within thirty (30) days after the Port Authority gives written notice, serve a notice on the Port Authority stating the grounds upon which the Airport Operator considers the objection to be wrongly taken and in such event the parties will refer the objection to the Port Authority's exceptions to the accounting firm selected by the Airport Operator from a list of three neutral accounting firms as submitted by the Port Authority, and the decision of such accounting firm as to the validity of the objection shall be final.

There shall be excluded from capital investment any cost of personal property. Notwithstanding any other provision of this Agreement, in ascertaining the amount the Port Authority shall be obligated to pay the Airport Operator under subdivisions (ii) or (iii) of subparagraph (1) hereof, the unamortized capital investment of each new structure, new building or other improvements shall be diminished by the amount that any part of the components of costs thereof are secured by liens, mortgages, or other encumbrances, or conditional bills of sale on said construction and less any other amounts whatsoever due under this Agreement from the Airport Operator to the Port Authority. The capital investment for any such new building, new structure or other improvements shall not include any expenses, outlays or charges by or for the account of the Airport Operator for or in connection with the work unless said work is actually made and completed and becomes part of the Airport. The obligation of repayment under subdivision (iii) of subparagraph (1) hereof is limited moreover to the amount the Airport Operator is obligated to pay such user of the Airport and shall not be reimbursed to the Airport Operator unless and until the Airport Operator furnishes satisfactory evidence of its payment to such user.

(c) In the event of the termination of the Agreement by the Airport Operator pursuant to the provisions of paragraph (a) hereof and in the event the Port Authority is obligated to pay to the Federal Aviation Administration the interest as set forth in paragraphs (a) and (b) of Section 14 of the Grant Agreements,

the Airport Operator shall on demand reimburse the Port Authority for one-half of the amounts so paid by the Port Authority.

Section 29. No Interest in Real Property

Nothing contained in this Agreement shall grant or be construed to grant to the Airport Operator any interest or estate in real property and a landlord-tenant relationship shall not be or be deemed to be created hereunder.

Section 30. Accident Reports

If death, serious injury or serious damage arising out of or in connection with the operation of the Airport occurs, such occurrences shall be immediately reported by telephone to such representative of the Port Authority as may be designated from time to time by the Port Authority and the Airport Operator shall thereafter give a written report thereof to the Port Authority.

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In the event any claim is made by any person against the Airport Operator arising out of any such occurrence, the Airport Operator shall report such claim in writing to the Port Authority. In addition the Airport Operator shall promptly furnish to the Port Authority copies of all reports given to the Airport Operator's insurance carrier.

Section 31. Brokerage

The Airport Operator and the Port Authority each represent and warrant to the other that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. Each party shall indemnify and save harmless the other of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services provided or alleged to be provided in connection with the negotiation and execution of this Agreement and resulting from the actual or alleged acts, omissions, conduct or dealings of such party.

Section 32. Non-Liability of Individuals

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or any supplement, modification or amendment to this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 33. Remedies to be Non-exclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 34. Cooperation of the Port Authority

The Port Authority agrees to cooperate with the Airport Operator in dealing with governmental authorities in connection with the operation of the Airport, and in future developments by third persons which may result in hazards or other obstructions affecting the flow of air traffic to the Airport, and in making arrangements for ground transportation to and from the Airport, and if any such proposed cooperation requires expenditures other than incidental expenses to the Port Authority, the Port Authority's obligation hereunder shall be subject to mutual agreement between the parties as to the Port Authority's reimbursement. Port Authority cooperation shall also include consideration by it of any advice by the Airport Operator that in its opinion additional properties may be necessary or desirable for the improvement of the Airport or the removal of hazards or other obstructions and the Port Authority shall consider whether it shall exercise its condemnation powers with respect thereto. It is recognized that the Airport Operator has no independent ability to take such action, and that such action may be needed for future airport activities or development. It is expressly understood that the Port Authority shall not be obligated in any event to undertake any condemnation proceedings except as it deems necessary or desirable. In the event of any such condemnation, the Port Authority may require that the parties agree prior thereto upon any costs or expenses relating to the same.

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Nothing contained herein shall be deemed to limit the provisions of Section 24 of the Agreement.

Section 35. Charges

(a) The Airport Operator agrees that the Schedule of Charges for the use of the areas shown in hatching and stipple on Exhibit B-1 and as set forth in Exhibit I, attached hereto and made a part hereof, shall initially be in full force and effect except as the same may be changed by mutual agreement of the parties prior to the commencement of the term. The Airport Operator may on notice to the Port Authority modify any charges covered by the Schedule of

Charges; however, any changes in the Schedule of Charges proposed by the Airport Operator from time to time during the term of the Agreement in excess of the highest prevailing charges of a similar nature at other airports owned or operated by the Port Authority will be subject to the approval of the Board of Commissioners of the Port Authority.

(b) All charges with respect to the use of the Airport or any part thereof including but not limited to those referred to in paragraph (a) above, shall be at fair, reasonable and not unjustly discriminatory rates.

Section 36. Signs and Advertising

Any signs, posters, lettering, displays or any advertising at or on the Airport shall be in complete accord with good taste, proper decor and consonant with the Airport being owned by the Port Authority, a public agency. Except for advertising on behalf of the Airport Operator or other users of the Airport, there shall be no product or service advertising at the Airport, nor shall there be any third party advertising without the prior approval of the Port Authority.

Section 37. Name of Airport

If the Airport Operator desires the name of the Airport changed from "Teterboro Airport" the Airport Operator shall submit any suggested change to the Port Authority and any such change shall be subject to the prior approval of the Board of Commissioners of the Port Authority.

There shall be erected and maintained at the Airport by the Airport Operator a sign or signs of appropriate size, character and location which shall contain the name of the Airport, and state that the Airport is:

"Operated by Pan American World Airways, Inc.
Owned by The Port of New York Authority".

Section 38. Restrictive Agreements

This Agreement is entered into subject to all easements, rights, restrictions, reservations and agreements to which the Airport may be subject, including but not limited to, those affecting public streets, if any, at the Airport, the heating, lighting, power, telegraph, fire alarm, telephone, steam, fuel, gas, water, sewer, drainage, mechanical, electrical, or any other systems or utilities at the Airport, and any other services provided at the Airport, and whether or not any of the foregoing are held by or are covered by agreement with any person, firm, corporation, enterprise of any kind, public or private, or any municipality, county, or state in which the Airport is located.

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All of the foregoing, both with respect to such of the same as are of record and such of the same which are set forth in the list attached hereto, hereby made a part hereof and marked Exhibit J, are sometimes hereinafter referred to as "the restrictive agreements". The Port Authority shall have the right to terminate any or all of the restrictive agreements which pertain to services provided at the Airport prior to the commencement date of the term of this Agreement. The Port Authority shall from time to time by written notice to the Airport Operator notify it of said termination, and Exhibit H shall be deemed amended accordingly. The Airport Operator hereby assumes all obligations, if any, of the Port Authority under the restrictive agreements as if the Airport Operator were an original signatory thereto, arising on and after the commencement of the term hereof.

Section 39. General

(a) The Section headings are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(b) The Airport Operator acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, agents or employees as to the condition of the Airport or the suitability thereof for its operation as a public airport and for the use thereof by the Airport Operator.

(c) The Port Authority agrees that the Airport Operator, upon paying all fees hereunder and performing all the terms and provisions of this Agreement on its part to be performed, shall and may peaceably and quietly have the right to operate and use the Airport as provided herein free of any act or acts of the Port Authority except as expressly permitted in this Agreement.

(d) No greater rights or privileges with respect to the use of the Airport or of any part thereof are granted or intended to be granted to the Airport Operator by this Agreement, or by any provision thereof than the rights and privileges expressly and specifically granted.

(e) All designations of time herein contained shall refer to the time-system then officially in effect in the municipality wherein the Airport is located.

(f) The terms, provisions and obligations contained in the Exhibits attached hereto, whether there set out in full or as amendments of, or supplements to provisions elsewhere in the Agreement stated shall have the same force and effect as if herein set forth in full.

(g) The term "aircraft" as used in this Agreement other than in the provisions hereof with respect to insurance requirements shall mean fixed or rotary wing aircraft using air-breathing engines, and such other type of aircraft as may be developed which are compatible with the use of the Airport for the purposes hereunder as may be agreed upon by the parties.

(h) Wherever in this Agreement the term "agreement of the parties" is used, it shall mean each party acting in its own sole discretion.

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(i) The term "scheduled aircraft operations" as used in this Agreement shall mean common carrier air transportation operations conducted on a regular or periodically recurring basis.

(j) Although all Exhibits have been expressly stated under the terms of this Agreement to be attached hereto, Exhibits C, D, E, G and L, because of their size and bulk, have not been physically attached to this Agreement, but the same shall be bound in separate packet or packets appropriately marked and initialled by the parties and shall be deemed to be attached to this Agreement.

Section 40. Federal Airport Aid

(a) If the Airport Operator prior to the end of the third year of the term of the Agreement requests the Port Authority to apply to the Federal Aviation Administration for a grant of federal funds covering the costs of land acquisition for the Airport incurred by the Port Authority prior to the commencement of the term of the Agreement and has served a written notice upon the Port Authority waiving its right to terminate the Agreement granted under paragraph (a) of Section 25 hereof, all of which to be in the form annexed hereto as Exhibit K, then the Port Authority will apply for such a grant of federal funds.

(b) If the Airport Operator requests the Port Authority to apply to the Federal Aviation Administration for a grant of federal funds covering the costs of the Runway and Taxiway Construction and has served a written notice upon the Port Authority waiving its right to terminate the Agreement granted under paragraph (a) of Section 25 hereof, all to be in the form as set forth in Exhibit K, then the Port Authority will apply for such a grant of federal funds.

(c) The Port Authority shall have no obligation to apply for or accept a grant of federal funds covered by either paragraph (a) or (b) hereof if the terms, conditions or provisions of the Grant Agreement and Project Application pertaining to each such grant are different from or additional to the provisions set forth in the form attached hereto, hereby made a part hereof and marked Exhibit L (as appropriately completed to reflect an applica-

tion for the costs of land acquisition or the Runway and Taxiway Construction, as the case may be) or, if the Federal Aviation Administration, the federal statutes or regulations impose or attempt to impose any additional terms, provisions or conditions.

(d) The Airport Operator, in its management, operation, maintenance and use of the Airport and any part thereof, shall be subject to and hereby assumes the terms, conditions, and provisions of the aforesaid Grant Agreements and the Project Applications imposed thereunder on the Port Authority and the Assurances set forth therein, and any other federal obligations or restrictions with respect thereto, provided any such grant is actually made. Such assumption by the Airport Operator shall be deemed to mean not only that it itself shall abide by and comply with all of the foregoing as if it were named as the Sponsor therein in the operation of the Airport, its use thereof and in providing services and items to its customers, but also the Airport Operator shall in its agreements with other users of the Airport insert in said agreements the appropriate provisions and requirements as

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required by any and all of the provisions of the Grant Agreement and the Project Applications, the assurances set forth therein and any other federal obligations or restrictions with respect thereto.

(e) The Airport Operator agrees that if the Administrator of the Federal Aviation Administration or any other governmental officer or body having jurisdiction in connection with the obligations of the Port Authority relating to the grant of federal funds with respect to the Airport shall make any orders or regulations, respecting the performance by the Port Authority or the Airport Operator of such obligations, the Airport Operator will promptly comply therewith unless expressly directed otherwise by the Port Authority, and in addition to the foregoing whether or not the Administrator of the Federal Aviation Administration or any other governmental officer or body having jurisdiction as aforesaid, specifically directs such compliance, the Airport Operator agrees that it will comply with such directions, orders, regulations and requirements as may be given by the Port Authority to comply with the Grant Agreements with respect to the Airport, the Project Applications, the assurances set forth therein and any other federal obligations or restrictions with respect thereto.

(f) In the event the grant of federal funds for land acquisition as provided in paragraph (a) hereof is actually received by the Port Authority, the basic fees payable by the Airport Operator shall be revised in accordance with the provisions of Exhibit M attached hereto and hereby made a part hereof.

(g) Nothing contained in this or any other Section of the Agreement shall be deemed to prevent or preclude the Port Authority from making any other applications to the Federal Aviation Administration for grants of federal funds or from receiving any such grants.

Section 41. Approval Under Federal Aviation Act

Notwithstanding anything herein contained, this Agreement shall not become effective until the Civil Aeronautics Board has issued a final order either approving this Agreement under Section 408(a) of the Federal Aviation Act of 1958, as amended (49 USCA Section 1378 (a)) or disclaiming jurisdiction under said Section. The Airport Operator agrees to apply for and use its best efforts to obtain such an order as promptly as possible. The Port Authority agrees to cooperate with the Airport Operator in obtaining such an order. In the event approval is given but shall contain or shall be issued subject to any condition, modification, or qualification which is unsatisfactory to either party and such party notifies the other within 30 days after the issuance thereof to such effect, then the parties shall cooperate with each other in taking further action to remove or modify to the satisfaction of the parties such condition, modification or qualification and this Agreement shall not become effective until a final order has been issued, removing or modifying such condition, modification or qualification to the satisfaction of the parties. The Airport Operator shall promptly deliver to the Port Authority copies of any such orders of the Civil Aeronautics Board and of any court which may review any of such orders and the parties will promptly deliver to each other copies of all correspondence and other documents relating to the proceedings referred to in this Section 41.

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"Final Order" as used herein shall mean an order of the Civil Aeronautics Board which shall have become final and shall not be subject to further proceedings before the Civil Aeronautics Board or to judicial review (including timely petition for rehearing).

Section 42. Entire Agreement

This Agreement consists of the following:

Sections 1 to 42, inclusive, and Exhibits A-1, B-1, C, D, E, F, G, H, I, J, K, L and M. It constitutes the entire agreement of the parties on the subject matter hereof, and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Airport Operator. The parties agree that no representations

or warranties shall be binding upon the Port Authority or the Airport Operator unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

ATTEST:

THE PORT OF NEW YORK AUTHORITY

/s/ Joseph G. Carty
Secretary

By /s/ Austin J. Tobin
(Title) Executive Director
(seal)

ATTEST:

PAN AMERICAN WORLD AIRWAYS, INC.

/s/ Josiah Macy, Jr.
Secretary

By /s/ Juan T. Trippe
(Title) Chairman of the Board
(corporate seal)

FORM
APP'D.
JAS SMB
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R U L E S A N D R E G U L A T I O N S

I. G E N E R A L

1. The following terms as used in these rules and regulations shall have the following meanings:

(a) "Aircraft" shall mean and include any and all contrivances now or hereafter used for the navigation of or flight in air or space, including but not limited to airplanes, airships, dirigibles, helicopters, gliders, amphibians and seaplanes.

(b) "Fuel handling" shall mean the transporting, delivering, fueling and draining of fuel or fuel waste products.

(c) "Fuel Storage Area" shall mean and include those portions of the air terminal designated temporarily or permanently by the Airport Operator as areas in which gasoline or any other type of

fuel may be stored, including but not limited to gasoline tank farms at which fuel is loaded.

(d) "Jet Aircraft" shall mean and include any and all aircraft which are not propeller-driven, and which accomplish motion entirely as a direct reaction of the thrust of any engine, including but not limited to engines which operate on turbine, ram, rocket or nuclear principles.

(e) "Manager" shall mean the Airport Manager, or his duly authorized representative, appointed by the Airport Operator.

(f) "Operational area" shall mean any place on the air terminal not leased to anyone for exclusive use and not an air terminal highway, public vehicular parking area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area, public aircraft parking and storage area or fuel storage area.

(g) "Operator" shall mean the owner of an aircraft or any person who has rented such aircraft for the purpose of operation by himself or his own agents.

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(h) "Permission" shall mean permission granted by the manager, unless otherwise specifically provided.

(i) "Person" shall mean any individual, firm, co-partnership, corporation, association, or company (including any assignee, receiver, trustee or similar representative thereof) or the United States of America or any foreign government or any

state or political subdivision thereof, or the United Nations.

(j) "Port Authority" shall mean The Port of New York Authority.

(k) "Port Authority rules and regulations" shall mean these Rules and Regulations.

(l) "Public aircraft parking and storage areas" shall mean and include those portions of the air terminal designated and made available temporarily or permanently to the public for the parking or storage of aircraft.

(m) "Public cargo ramp and apron area" shall mean and include those portions of the air terminal designated and made available temporarily or permanently to the public for the loading or unloading of cargo (but not passengers) on and from aircraft.

(n) "Public landing area" shall mean and include those portions of the air terminal including runways, and taxiways designated and made available temporarily or permanently to the public for the landing and taking off of aircraft and other areas between and adjacent to said runways and taxiways.

(o) "Public passenger ramp and apron area" shall mean and include those portions of the air terminal designated and made available temporarily or permanently to the public for the loading or unloading of passengers to and from aircraft (but not cargo except to the extent that cargo is loaded or unloaded on or from passenger aircraft).

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(p) "Public ramp and apron area" shall mean and include those portions of the air terminal designated and made available temporarily or permanently to the public for loading or unloading of both passengers and cargo on and from aircraft.

(q) "Public vehicular parking area" shall mean and include those portions of the air terminal designated and made available temporarily or permanently to the public for the parking of vehicles.

(r) "Turbo-prop aircraft" shall mean and include any and all aircraft which accomplish motion by means of a jet engine having a turbine driven propeller whose thrust may or may not be supplemented by that of hot exhaust gases issuing in a jet from the engine itself.

(s) "Vehicle" shall mean and include automobiles, trucks, buses, motorcycles, horse-drawn vehicles, bicycles, push carts and any other device in or upon or by which any person or property is or may be transported, carried or drawn upon land, except railroad rolling equipment or other devices running only on stationary rails or tracks, and except aircraft.

(t) "Air terminal" as used in these Rules and Regulations shall mean Teterboro Airport.

2. Any permission granted directly or indirectly, expressly or by implication, to any person or persons, to enter upon or use the air terminal or any part thereof (including aircraft operators,

crew members and passengers, spectators, sightseers, pleasure and commercial vehicles, officers and employaes of lessees, and other persons occupying space at the air terminal, persons doing business with the Airport Operator, its subcontractors

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and permittees, and all other persons whatsoever whether or not of the type indicated), is conditioned upon compliance with these rules and regulations; and entry upon or into the air terminal by any person shall be deemed to constitute an agreement by such person to comply with said rules and regulations; provided, however, that any specific rule or regulation will not apply to a user of the air terminal if the agreement between such user and the Airport Operator so provides and the Port Authority has given its express written consent to the waiver of said rule or regulation.

3. No person shall carry on any commercial activity at the air terminal other than aircraft operations without the consent of the Airport Operator.

4. Unless otherwise provided in a lease or other agreement, no person shall use any area of the air terminal (other than the public aircraft parking and storage areas), for parking and storage of aircraft without permission of the Manager. When the Manager deems that such use will not interfere with the operation of the air terminal, and such permission is granted, the charge for such use shall be double the rates provided in the Schedule of Charges at the air terminal for the public aircraft parking and storage area thereat, this charge to apply

from the time the aircraft is so parked or stored at the air terminal. If, notwithstanding the above prohibition, a person uses such areas for parking or storage as aforesaid, without first obtaining such permission, then the Manager shall have authority to order the aircraft removed or to cause the same to be removed and stored at the expense of the owner thereof, without liability for damage thereto arising from or out of such removal or storage. The above rate shall apply for the time said aircraft has been so parked or stored at the air terminal.

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5. No person shall use or occupy an operational area for any purpose whatsoever except a purpose pertaining to the servicing of tenants, concessionaires, airport users, or governmental agencies, or a purpose connected with a maintenance and operation of the air terminal, without approval.
6. No person shall land or take off an aircraft on or from a public landing area, or use a public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area, or a public aircraft parking and storage area, except upon the payment of such fees and charges as may from time to time be prescribed, unless such person is entitled to use such area under a lease or other agreement.

II. AIRCRAFT

7. The Airport Operator may prohibit aircraft landing and taking off at any time when, and under any circumstances under which the Manager deems such landing and take-offs likely to endanger persons or property, except for emergency landings.
8. No person shall navigate any aircraft, land aircraft upon, fly aircraft, from, or conduct any aircraft operations on or from the air terminal otherwise in conformity with then current Federal Aviation Administration and Civil Aeronautics Board rules and regulations.
9. No aircraft shall be operated on the surface of a public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area in a careless or negligent manner or in disregard of the rights and safety of others, or without due caution and circumspection, or at a speed or in a manner which endangers unreasonably, or is likely to endanger unreasonably persons or

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property, or while the pilot, or other persons aboard controlling any part of the operation thereof, is under the influence of intoxicating liquor, or any narcotic or habit-forming drug, or if such aircraft is so constructed, equipped or loaded as to endanger unreasonably or to be likely to endanger unreasonably persons or property.

10. The pilot or other person aboard engaged in the operation of any

aircraft (except when subject to the direction or control, for ground movement purposes, of the Federal Aviation Administration or other Federal agency) being operated on the surface of any operational area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area must at all times comply with any lawful order, signal or direction of an authorized representative of the Airport Operator. When operation of such aircraft is controlled by lights, signs, mechanical or electrical signals or pavement markings, such lights, signs, signals and markings shall be obeyed unless an authorized representative of the Airport Operator directs otherwise.

11. No aircraft may land or take off at the air terminal unless it is equipped with brakes and a functioning radio capable of direct two-way communication with the control tower, except in the case of an emergency.
12. No motorless aircraft may land or take off at the air terminal without permission of Pan American World Airways, Inc.
13. No jet or turbo-prop aircraft may land or take off at the air terminal without permission of Pan American World Airways, Inc.

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14. No jet or turbo-prop aircraft shall be taxied at the air terminal where the exhaust blast may cause injury to persons or do damage to property. If it is impossible to taxi such

aircraft without compliance with the above, then the engine must be shut off and aircraft towed to desired destination.

15. No jet or turbo-prop aircraft engines shall be started while the aircraft is parked on the air terminal where exhaust blast may cause injury to persons or do damage to property.
16. Drip pans shall be placed under each engine when a jet or turbo-prop aircraft is parked on bituminous or concrete pavement, such drip pans to remain in place until after the aircraft is moved.
17. Aircraft engines shall be started and warmed up on the air terminal only in places designated for such purposes by the Manager. No jet or turbo-prop aircraft engine shall be run-up except on warm-up pads or in other areas authorized for that purpose by the Manager.
18. Jet-assisted take-offs shall not be made at the air terminal without obtaining the Manager's permission and notifying the Control Tower in advance.
19. No person shall practice aircraft landings or take-offs at the air terminal without permission of the Airport Operator.
20. No aircraft shall land, take-off or taxi at the airport with a student pilot at the controls without the permission of the Airport Operator.
21. No aircraft shall use any part of the public landing areas considered temporarily unsafe for landing or taking off, or which is

not available for any cause; the boundaries of such areas will be marked with red flags by day and red lights by night, and notice thereof will be given to the Control Tower by the Airport Operator.

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22. Aircraft landing at the air terminal shall make the landing runway available to others by leaving the line of traffic as promptly as possible.
23. No aircraft having an actual gross weight of over 100,000 pounds, including passengers, cargo, fuel, equipment, etc. shall land, take off or taxi at the air terminal without permission of Pan American World Airways, Inc.
24. Aircraft shall not be positioned or taxied so that propeller slip-stream or jet engine exhaust is directed at spectators, personnel, hangars, shops, or other buildings in such a manner as to cause personal injury, property damage or the actuation of sprinkler systems and fire detection systems.
25. No person shall start an aircraft engine at the air terminal unless there is a qualified attendant standing by outside the aircraft with a fifteen (15) pound or larger carbon dioxide fire extinguisher.
26. No aircraft engine shall be started or run at the air terminal unless a certificated pilot certificated to operate that particular type of aircraft or a certificated A and E mechanic qualified to start and run the engines of that particular

type of aircraft shall be attending the controls. Wheel blocks equipped with ropes or other approved devices for blocking an aircraft shall always be placed at the front and rear of each main landing wheel and the brakes of the aircraft shall be on and locked before the engine or engines are started, except in cases where in the opinion of the Manager, other proven procedures are equally safe.

27. No aircraft shall be taxied at the air terminal unless a certificated pilot certificated to operate that particular type of aircraft or a certificated A and E mechanic properly qualified to taxi that

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particular type of aircraft shall be attending the controls. In the case of helicopters, only a certificated helicopter pilot shall attend the controls.

28. All aircraft which are being taxied, towed or otherwise moved at the air terminal shall be under full control and shall move or be moved at a reasonable speed. Whenever any aircraft is being taxied, towed or otherwise moved on the public landing area, public ramp and apron area, public passenger ramp and apron area, or public cargo ramp and apron area, there shall be a person attending the controls of the aircraft who shall monitor by radio the transmitting frequency in use by the control tower or who, if necessary, will cause that frequency to be monitored by another person in the aircraft at the time. In the event the aircraft is not equipped with radio or the radio is inoperative,

the person moving aircraft shall use an Aldis Lamp for communicating with control tower.

29. No aircraft shall cross an air terminal highway or a public highway at the air terminal under its own power without permission.
30. No person shall park an aircraft or leave the same standing on a public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area, public aircraft parking and storage area, or operational area at the air terminal except at such places as may be prescribed or permitted by the Airport Operator. When in such an area, every aircraft shall be firmly tied to the ground by ropes and stakes, or otherwise properly secured or attended. The main landing wheels of every such aircraft shall be chocked with wheel blocks or other approved devices, except in cases where, in the opinion of the Manager, other proven procedures are equally safe.

Helicopters shall have braking devices and/or rotor mooring blocks applied to the rotor blades.

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31. Upon direction from the Manager, the Operator of any aircraft parked or stored at the air terminal shall move said aircraft from the place where it is parked or stored to any other designated place; if the operator refuses to comply with such direction, the Airport Operator may tow said aircraft to such designated place at the operator's expense, and without liability for damage which may result in the course of such moving.

32. Aircraft dump valves shall be tested only in those areas designated for that purpose by the Manager.
33. No aircraft shall be taxied into or out of a hangar under its own power.
34. Every aircraft parked on a public ramp or apron area, public passenger ramp or apron area, or public cargo ramp and apron area shall have its running lights lighted during the hours between sunset and sunrise.
35. All aircraft being taxied, towed or otherwise moved at the air terminal shall proceed with running lights on during the hours between sunset and sunrise.
36. The pilot of any aircraft involved in any accident causing personal injury or property damage at the air terminal shall make a prompt and full report of said accident to the Manager.
37. The pilot or operator thereof shall be responsible for the prompt disposal of aircraft wrecked or disabled at the air terminal and parts of such aircraft as directed by the Manager: in the event of his failure to comply with such directions such wrecked or disabled aircraft and parts may be removed by the Airport Operator at the operator's expense and without liability for damage which may result in the course of such removal.

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38. All charges due for the use of the air terminal shall be payable in cash unless credit arrangements satisfactory to the Airport

Operator have been made in advance or permission has been secured for payment by check.

39. The Manager shall have authority to detain any aircraft for nonpayment of storage charges due for storage at the air terminal.
40. The Airport Operator shall have authority to deny the use of the air terminal to any aircraft or pilot violating these Rules and Regulations or Federal regulations.

III. SAFETY

41. No person in or upon the air terminal shall do or omit to do any act if the doing or omission thereof endangers unreasonably or is likely to endanger unreasonably persons or property.
42. No person shall smoke or carry lighted cigars, cigarettes, pipes, matches or any naked flame in or upon any fuel storage area, public landing area, public ramp or apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area, on any open deck, gallery or balcony contiguous to and overlooking any such area, in any other place where smoking is specifically prohibited by signs, or upon any open space within fifty (50) feet of any fuel carrier which is not in motion.
43. No person shall operate an oxy-acetylene torch, electric arc or similar flame or spark producing device on any part of the air terminal except in areas within leased premises designated for such use by the Manager, without first obtaining a Cutting and

32. Aircraft dump valves shall be tested only in those areas designated for that purpose by the Manager.
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35. All aircraft being taxied, towed or otherwise moved at the air terminal shall proceed with running lights on during the hours between sunset and sunrise.
36. The pilot of any aircraft involved in any accident causing personal injury or property damage at the air terminal shall make a prompt and full report of said accident to the Manager.
37. The pilot or operator thereof shall be responsible for the prompt disposal of aircraft wrecked or disabled at the air terminal and parts of such aircraft as directed by the Manager: in the event of his failure to comply with such directions such wrecked or disabled aircraft and parts may be removed by the Airport Operator at the operator's expense and without liability for damage which may result in the course of such removal.

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42. No person shall smoke or carry lighted cigars, cigarettes, pipes, matches or any naked flame in or upon any fuel storage area, public landing area, public ramp or apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area, on any open deck, gallery or balcony contiguous to and overlooking any such area, in any other place where smoking is specifically prohibited by signs, or upon any open space within fifty (50) feet of any fuel carrier which is not in motion.
43. No person shall operate an oxy-acetylene torch, electric arc or similar flame or spark producing device on any part of the air terminal except in areas within leased premises designated for such use by the Manager, without first obtaining a Cutting and

Welding Permit from the Manager. No such permit will be issued

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for such operations within an aircraft hangar or within any fuel storage area or fuel parking area, unless the work is required for the repair and maintenance of said hangars or areas.

44. No person shall start any open fires of any type, including flare pots, torches or fires in containers formerly used for oil, paint, and similar materials on any part of the air terminal without permission.
45. No person shall store, keep, handle, use, dispense or transport at, in or upon the air terminal any Class A or Class B explosives (as defined in the Interstate Commerce Commission Regulations for transportation of explosives and other dangerous articles), dynamite, nitroglycerine, black powder, fireworks, blasting caps or other explosives, gasoline, alcohol, ether, liquid shellac, kerosene, turpentine, formaldehyde or other flammable or combustible liquids, ammonium nitrate, sodium chlorate, wet hemp, powdered metallic magnesium, nitrocellulose film, peroxides, or other readily inflammable solids or oxidizing materials, hydrochloric acid, sulphuric acid or other corrosive liquids, prussic acid, phosgene, arsenic, carbolic acid, potassium cyanide, tear gas, lewisite or any Class A poisons (as defined in the Interstate Commerce Commission Regulations for transportation of explosives and other dangerous articles), or any other poisonous substances, liquids or gas, or any compressed gas, or any radioactive article, substance or

material, at such time or place or in such manner or condition as to endanger unreasonably or as to be likely to endanger unreasonably persons or property.

46. No person shall without prior permission of the Manager keep, transport, handle or store at, in or upon the air terminal any cargo of explosives or other dangerous articles which is barred

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from loading in or transportation by civil aircraft in the United States under the current provisions of Part 103 of the Federal Aviation Regulations promulgated by the Federal Aviation Administration. Any waiver of such Regulations or of any part thereof by the Federal Aviation Administration or by any other competent authority shall not constitute or be construed to constitute a waiver of this Rule or an implied permission to keep, transport, handle or store such explosives or other dangerous articles at, in or upon the air terminal. Advance notice of at least 24 hours shall be given the Manager to permit full investigation and clearance for any operation requiring a waiver of this rule.

47. No person shall, at any time, store, keep, handle, use or transport at, in or upon the air terminal any weapon of war employing atomic fission or radioactive force.
48. No person shall, without prior permission of the Manager, store, keep, handle, use or transport at, in or upon the air terminal the following radioactive materials:
- (a) source material (as defined in Standards for Protection Against Radiation, promulgated by the Atomic Energy Commission,

Title 10, Code of Federal Regulations, Part 20) including, but not limited to, uranium, thorium, or any combination thereof (but not including the "unimportant quantities of source material" set forth in 10 CFR 40.13).

(b) special nuclear material (as defined in Standards for Protection Against Radiation promulgated by the Atomic Energy Commission, Title 10, Code of Federal Regulations, Part 20) including, but not limited to, plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, or any material artificially enriched by any of the foregoing.

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(c) nuclear reactor fuel elements that are partially expended or irradiated.

(d) new nuclear reactor fuel elements.

(e) radioactive waste material.

(f) any radioactive material moving under an Interstate Commerce Commission special permit or Atomic Energy Commission permit and escort.

Advance notice of at least twenty-four hours shall be given the Manager to permit full investigation and clearance for any operation requiring a waiver of this rule. The permission of the Manager may be given to movements of radioactive materials only when such materials are packaged, marked, labeled and limited as required by the Interstate Commerce Commission and Federal Aviation Administration regulations applying to transportation of explosives and other dangerous

articles and do not create an undue hazard to life or property at the air terminal.

49. The heating of engines at the Air Terminal shall be done only by the use of steam, hot water, hot air or approved electric heaters.
50. Fire extinguisher equipment at the Air Terminal shall not be tampered with at any time or used for any purpose other than fire fighting or fire prevention. All such equipment shall be inspected in conformity with the National Fire Protection Association's regulations. Tags showing the date of the last such inspection shall be left attached to each unit.
51. Heater valves, sprinkler valves and devices, blower motors or any other Air Terminal machinery or equipment shall not be

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tampered with at any time. No person other than an authorized Airport Operator employee shall turn heaters in public areas on and off or operate any other airport equipment, except in leased areas.

IV. FUEL HANDLING

52. Aircraft fueling is prohibited while the engine of the aircraft being fueled is running or is being heated. Fuel shall be delivered or drained through hose and connections approved by the Underwriters Laboratories, Inc.
53. During all fuel handling operations in connection with any aircraft at the air terminal, the aircraft and the fuel dispensing

- or draining apparatus shall be grounded by wire to prevent the possibility of static ignition of volatile liquids.
54. Aircraft fuel handling at the air terminal shall be conducted at least fifty (50) feet from any hangar or other building, except where the location of underground fuel tanks presently installed requires such fuel handling closer to existing buildings or hangars.
55. During fuel handling operations in connection with any aircraft at the air terminal, at least two CO₂ fire extinguishers (15-pound or larger) or other type fire extinguishers acceptable to the Manager, shall be immediately available for use in connection therewith.
56. During fuel handling in connection with any aircraft, no person shall operate any radio transmitter or receiver in such aircraft, or switch electrical appliances on or off in such aircraft, nor shall any person do any act or use any material which is likely to cause a spark within fifty (50) feet of such aircraft.
57. No airborne radar equipment shall be operated or ground tested on a public passenger ramp and apron area or any area wherein the directional beam of high intensity radar is within 300 feet or the low intensity beam (less than OKW output) is within 100
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- feet of another aircraft, an aircraft refueling operation, an aircraft refueling truck or aircraft fuel or flammable liquid storage facility.
58. During fuel handling in connection with any aircraft, no passenger or passengers shall be permitted to remain in

such aircraft unless a cabin attendant is at the door and a passenger ramp is in position if the same is required for the safe and rapid debarkation of passengers. Smoking is prohibited in or about such aircraft during fuel handling. Only personnel engaged in the fuel handling, or in the maintenance and operation of the aircraft being fueled shall be permitted within fifty feet of the fuel tanks of such aircraft during the fuel handling operations.

59. Persons engaged in aircraft fuel handling shall exercise care to prevent overflow of fuel.
60. No person shall start the engine or engines of any aircraft when there is gasoline or any type of fuel on the ground under the aircraft. In the event of the spillage of gasoline or any type of fuel no person shall start an aircraft engine in the area in which the spillage occurred even though the spillage may have been flushed, until permission has been granted for the starting of engines in the area.
61. Unless otherwise provided in a lease or other agreement, all operators of aircraft who receive, and all persons who supply, aviation fuel and lubricating oil at the air terminal, shall use only these aviation fuel storage and delivery facilities designated by the Airport Operator for such use.
62. The transfer of bulk aircraft or commercial fuel from one vehicular tender into another is prohibited within the boundaries of the air terminal.
63. Automotive and ramp equipment shall be refueled only at.

refueling stations and from dispensing devices approved by the Manager.

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V. VEHICLES

64. All traffic in or upon a public vehicular parking area, operational area, fuel storage area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage areas must at all times comply with any lawful order, signal or direction. When such traffic is controlled by traffic lights, signs, mechanical or electrical signals, or pavement markings, such lights, signs, signals and markings shall be obeyed.
65. No vehicle shall be operated in or upon a public vehicular parking area, operational area, fuel storage area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area, or public aircraft parking and storage area in a careless or negligent manner or in disregard of the rights and safety of others, or without due caution or circumspection, or at a speed or in a manner which endangers unreasonably or is likely to endanger unreasonably persons or property, or while the driver thereof is under the influence of intoxicating liquor, or any narcotic or habit-forming drug or if such vehicle is so constructed, equipped or loaded as to endanger

unreasonably or be likely to endanger unreasonably persons or property.

66. No motorized vehicle shall be operated in or upon a public vehicular parking area or air terminal highway unless (1) the driver thereof is duly authorized to operate such vehicle on state or municipal highways and unless (2) such vehicle is registered in accordance with the provisions of the law of the state.

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67. No vehicle shall be permitted in or upon an operational area, fuel storage area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area, or public aircraft parking and storage area unless authorized by the Airport Operator and unless it shall be in sound mechanical order, shall have adequate lights, horn and brakes and clear vision from the driver's seat. Trailers and semi-trailers shall not be permitted unless they are equipped with reflector buttons and unless they shall be equipped with proper brakes so that when disengaged from a towing vehicle, neither aircraft propellor blast nor wind will cause them to become free rolling. Positive locking couplings shall be required for all towed equipment.
68. All ground self-propelled vehicles, except emergency equipment responding to an alarm, shall yield the right of way to any and all aircraft in motion. All aircraft shall hold their positions and/or clear runways during an emergency unless otherwise directed by the control tower.

69. All vehicles operating on the public landing area shall obtain clearance from the control tower before entry thereon. Between the hours of sunrise and sunset, such vehicles shall have a radio receiver in operation, or shall be painted bright yellow, or display a checkered flag, not less than three feet square, of international orange and white, the checks being at least one foot on each side; between the hours of sunset and sunrise, such vehicles shall have a radio receiver in operation or an overhead red light shall be displayed.
70. Vehicles at the air terminal shall be operated in strict compliance with speed limits prescribed by the Airport Operator as indicated by posted traffic signs. No vehicle shall exceed the speed of twenty (20) miles per hour on the public ramp

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and apron area, public passenger ramp and apron area, public cargo ramp and apron area, public aircraft parking or storage area.

71. No through vehicle shall be driven on the public ramp and apron area or the public passenger ramp and apron area between an aircraft and its loading gate.
72. No vehicle for hire shall load or unload passengers at the Air Terminal at any place other than that designated by the Manager.
73. The operation of taxicabs or other motor vehicles for hire for the purpose of soliciting or searching for passengers is pro-

hibited in or upon portions of air terminal highways where signs prohibiting "cruising" are posted.

74. No person shall park a vehicle or permit the same to remain halted on a public vehicular parking area, operational area, fuel storage area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area, except at such places and for such periods of time as may be prescribed or permitted by the Airport Operator. No aircraft refueling vehicle shall be parked within 50 feet of a building or hangar other than a refueling service-shop or within 15 feet of any other aircraft refueling vehicle.

75. No person shall stop or park a vehicle:

- (a) In front of a driveway.
- (b) Within a bus stop safety zone or taxicab zone, except vehicles authorized to use such areas.
- (c) In other than leased or authorized areas for the purpose of washing, greasing or repairing a vehicle, except repairs necessitated by an emergency.
- (d) On the roadway side of any stopped or parked vehicle (double parking).

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- (e) Within 15 feet of a fire hydrant..
- (f) Other than in accordance with restrictions posted on authorized signs.

76. No person shall park a vehicle within any public vehicular parking area except upon the payment of such parking fees and charges as may from time to time be prescribed.
77. The Manager shall have authority to detain vehicles parked in air terminal vehicular parking areas for non-payment of parking charges.
78. The driver of any vehicle involved in an accident on a public vehicular parking area, operational area, fuel storage area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area which results in injury or death to any person or damage to any property shall immediately stop such vehicle at the scene of the accident, render such assistance as may be needed, and give his name, address, and operator's license and registration number to the person injured or to any officer or witnesses of the injury. The operator of such vehicle shall make a report of such accident in accordance with the law of the State.
79. The Manager may remove from any area of the air terminal any vehicle which is disabled, abandoned, parked in violation of these rules and regulations, or which presents an operational problem to any other area at the air terminal at the operator's expense and without liability for damage which may result in the course of such moving.

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VI. MISCELLANEOUS

80. No person shall travel on any portion of the air terminal except upon the roads, walks or places provided for the particular class of traffic; nor occupy the roads or walks in such manner as to hinder or obstruct their proper use.
81. No person shall enter any restricted area of the air terminal posted as being closed to the public without permission except persons assigned to duty therein or authorized representatives of the Port Authority or the Airport Operator.
82. No person shall enter upon the public landing area, public ramp and apron area, public passenger ramp and apron area or the public cargo ramp and apron area of the air terminal without permission except persons assigned to duty therein, authorized representatives of the Port Authority or the Airport Operator, or passengers and crews entering upon the public ramp and apron areas for purposes of embarkation or debarkation.
83. Passengers shall not be permitted to enplane or deplane except in the presence of authorized personnel of the aircraft operator.
84. No person shall post, distribute or display signs, advertisements, circulars, printed or written matter

at the air terminal without permission.

85. No person shall solicit funds for any purpose at the air terminal without permission.

86. No person, unless duly authorized by the Airport Operator, shall, in or upon any area, platform, stairway, station, waiting room or any other appurtenance of the air terminal:

(a) sell, or offer for sale any article of merchandise; or

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(b) solicit any business or trade, including the carrying of baggage for hire; the shining of shoes or bootblackening; or

(c) entertain any persons by singing, dancing or playing any musical instrument; or

(d) solicit alms..

87. No person who is unable to give satisfactory explanation of his presence, shall loiter in or about any toilet, area, station, station platform, waiting room or any other appurtenance of the air terminal.

88. No person except authorized peace officers, other duly authorized government representatives and authorized security employees or members of the armed forces of the United States, on official duty, shall carry any firearms and explosives at the air terminal without permission.

All persons other than those in the excepted classes

shall, while at the air terminal, surrender all such objects in their possession.

89. No person shall interfere or tamper with any aircraft at the air terminal, or start the engine of such aircraft without the operator's consent.
90. Cleaning of or otherwise maintaining aircraft shall be accomplished only in areas designated for that purpose by the Manager.
91. No person shall place, discharge or deposit in any manner offal, garbage or any refuse in or upon any air terminal highway, operational area, fuel storage area, public vehicular parking area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area, or public aircraft and storage area, except at such places and under such conditions as the Airport Operator may from time to time prescribe.

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92. In the event of spillage or dripping of gasoline, oil, grease or any other material which may be unsightly or detrimental to the pavement in any area at the air terminal, the same shall be removed immediately. The responsibility for the immediate removal of such gasoline, oil, grease, or other material shall be assumed by the operator of the equipment causing the same or by the tenant or concessionaire responsible for the deposit thereof on the pavement.

93. No person shall enter any public building, arcade, observation platform, public landing area, public ramp and apron area, public passenger ramp and apron area, or public cargo ramp and apron area of the air terminal with any animal except a "seeing-eye" dog, or one properly confined for shipment. Animals may be permitted in other areas of the air terminal if on a leash or confined in such a manner as to be under control.
94. The following portions or areas of the air terminal operated by the Airport Operator shall be available for use for the following purposes; and such areas and portions of the air terminal may be used by members of the traveling public, by aircraft operators (and by officers and employees of aircraft operators), and by other persons, for such purposes and for such purposes only. The use of such areas and portions of the air terminal for any other purposes is forbidden; and any right, permit, license or permission, express or implied, to enter upon, pass through or otherwise use any such areas or portions of the air terminal is subject to the conditions that they shall be used only for such purposes, and in the event any person shall use or attempt to use such areas or portions of the air terminal for any other purpose or purposes, or shall use the same for an authorized purpose but in a disorderly manner, then any right, permit license or permission theretofore granted to him to use such space or portions of the air terminal for any purpose whatsoever shall forthwith cease and terminate without further action by the Airport Operator.

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(a) Public Aircraft Parking and Storage Areas may be used for the purpose of parking and storing aircraft, for the purpose of servicing aircraft with fuel and lubricants and other supplies for use thereon, and for the purpose of making minor or emergency repairs to aircraft.

(b) Public Cargo Ramp and Apron Areas may be used for the purpose of loading and unloading cargo, mail and supplies to or from aircraft, for the purpose of servicing aircraft with fuel and lubricants, for the purpose of performing the operations commonly known as "ramp service," for the purpose of performing inspection, minor maintenance and other services upon or in connection with aircraft incidental to performing "ramp service," and for the purpose of parking mobile equipment actively used in connection with such operations.

(c) Public Passenger Ramp and Apron Areas may be used for the purpose of loading and unloading passengers, baggage and supplies to or from aircraft, for the purpose of servicing aircraft with fuel and lubricants, for the purpose of performing the operations commonly known as "ramp service," for the purpose of performing inspection, minor maintenance and other services upon or in connection with aircraft, incidental to performing "ramp service" and for the purpose of parking mobile equipment actively used in connection with such operations.

(d) Public Ramp and Apron Areas may be used for the purpose of loading and unloading passengers, baggage, cargo, mail and supplies to or from aircraft, for the purpose of servicing aircraft with fuel and lubricants, for the purpose of performing the operations commonly known as "ramp service," for the purpose of performing inspection, minor maintenance and other services

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upon or in connection with aircraft incidental to performing "ramp service" and for the purpose of parking mobile equipment actively used in connection with such operations.

(e) Public Landing Areas may be used for the purpose of landing and taking-off of aircraft and for the purpose of the ground movement of aircraft to, from and between runways, Public Cargo Ramp and Apron Areas, Public Passenger Ramp and Apron Areas, Public Ramp and Apron Areas, Public Aircraft Parking and Storage Areas, and other portions of the air terminal.

(f) Air terminal Highways may be used as a means of ingress and egress by highways vehicles to, from and between the city streets with which such highways connect and the various buildings and land areas at the air terminal abutting upon such highway; and sidewalks along such highways (and other portions of such highways when designated for that purpose) may be used by pedestrians as a means of ingress and egress to, from and between various portions of the air terminal. Sidewalks

and other portions of highways designated for pedestrian use may also be used for picketing in connection with labor disputes, provided that such picketing does not unreasonably interfere with the use thereof by others, and provided that such picketing is conducted in the same peaceful and orderly manner as it is required by law and city regulation to be conducted upon city streets.

(g) Public Vehicular Parking Areas may be used for the purpose of parking highway vehicles.

(h) Hallways, corridors, lobbies and waiting rooms in the terminal buildings may be used as a means of ingress and egress to, from and between the air terminal highway and the ramp and apron space and other portions of the air terminal adjacent to such terminal buildings, and the various offices and places of business within the terminal buildings. Such hallways, corridors, lobbies and

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waiting rooms may also be used by incoming and outgoing passengers of aircraft while waiting the departure of aircraft or ground transportation, as the case may be, by friends and relatives of passengers bona fide for the purpose of meeting incoming passengers or accompanying outgoing passengers. In cases where counters are located in or along such hallways, corridors, lobbies or waiting rooms, such hallways, corridors, lobbies and waiting rooms may also be used at such counters for the purpose of carrying on any transactions authorized by the lease, permit or license

pursuant to which such counter is maintained and operated.

(i) Hallways, corridors and lobbies in buildings to which members of the public are admitted, other than the terminal building, may be used as a means of ingress and egress to, from and between the air terminal highways and other portions of the air terminal abutting upon such buildings, and the various offices and other places of business in such buildings.

(j) As used herein, the words "ingress and egress" refer merely to the use of an area or portion of the air terminal as a means of going from one place to another without undue delay.

(k) Nothing herein contained shall be construed to limit the use of any area or portion of the air terminal by officers or employees of the Port Authority, or by the Airport Operator, or to prevent any policeman, fireman or other public officer or employee from entering upon any part of the air terminal when properly required so to do in the performance of his official duties.

(l) The use of the foregoing areas and portions of the air terminal is further conditioned upon compliance with, and the payment of such rates, fees or charges, such other rules and regulations as are now in effect or may from time to time be prescribed.

* * *

837EXHIBIT ITETERBORO AIRPORTSCHEDULE OF CHARGESFOR THE USE OFTHE PUBLIC LANDING AREA

The operators of any aircraft using the public landing area at Teterboro Airport, except pursuant to the terms of a lease or other agreement with The Port of New York Authority or the Airport Operator, shall pay for such use at the rate set forth herein.

I. PUBLIC LANDING AREA CHARGES

1. For each take-off of aircraft not exceeding 2,500 pounds of maximum gross weight for take-off.....\$1.50

Operators of aircraft of this weight class may elect to pay a fee of \$10.00 per month or \$100 per year per aircraft for unlimited use of the public landing area in lieu of the charge provided above.

2. For each take-off of aircraft exceeding 2,500 pounds but not exceeding 7,500 pounds of maximum gross weight for take-off.....\$2.50

Operators of aircraft of this weight class may elect to pay a fee of \$15.00 per month or \$150.00 per year per aircraft for unlimited use of the public landing area in lieu of the charge provided above.

3. For each take-off of aircraft exceeding 7,500 pounds:--\$.02 per one hundred pounds of maximum gross weight for take-off, provided that the minimum charge for each such take-off shall be.....\$2.50
4. Maximum gross weight for take-off shall mean the maximum gross weight which an aircraft may lawfully have, at the time of leaving the ground at any airport in the United States (under the most favorable conditions which may exist at such airport and without regard to special limiting factors arising out of the particular time, place or circumstances of the particular take-off, such as runway length, air

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4. continued
temperature, or the like). If such maximum gross weight is not fixed by or pursuant to law, then said phrase shall mean the actual gross weight at take-off.
5. Such charges shall not be payable in connection with the following:
 - a. "Touch-and-go" and similar operations in which the aircraft comes in contact with the runways or ground and, without coming to a stop, thereafter resumes the flight by leaving the ground from the same runway and in the same direction, provided that the aircraft originates and terminates its flight at the airport and provided, further, that the initial take-off is subject to such charges.
 - b. Test flights which originate and terminate at the airport, provided:
 - (1) The repairs and/or work under test have been performed by an Airport Operator permittee at the airport;

- (2) No intermediate landings take place at other airports; and
 - (3) Not more than two hours elapse between the time an aircraft is duly authenticated for the test flight by the Airport Operator permittee performing the repairs and/or work and the time the aircraft returns to the airport.
- c. In the event an aircraft departs from the airport for another destination, which aircraft, without making a stop at another airport, is forced to return to and land at the airport because of meteorological conditions, mechanical or operating causes or for any similar emergency or precautionary reason, such charge shall not be payable in connection with the subsequent departure of such aircraft or a substituted aircraft; provided, however, that on such subsequent departure the aircraft or substituted aircraft is destined for the same point and transports the same or substantially the same load.

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II. FREE USE OF PUBLIC LANDING AREA

Notwithstanding the provisions of any Schedule of Charges heretofore adopted for the use of Teterboro Airport, no charge shall be made for the use of such areas at the airport by the following aircraft:

1. Aircraft operated by the Federal Aviation Administration or the Civil Aeronautics Board.
2. Aircraft owned by the State of New York or the State of New Jersey or City of New York, or the City of Newark.
3. Aircraft operated by the United States Coast Guard when engaged in the execution of search and rescue and law enforcement duties.

4. Aircraft owned or chartered by The Port of New York Authority.
5. Aircraft operated under orders of the Civil Air Patrol when engaged in the execution of official aircraft search and rescue missions or in officially ordered practice aircraft search and rescue missions.

III. CREDIT ARRANGEMENTS AND MONTHLY REPORTS

All charges under this Schedule of Charges shall be payable in cash as they are incurred unless credit arrangements satisfactory to the Airport Operator have been made in advance.

For the Port Authority

Initialed:

For the Airport Operator

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UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

PROJECT APPLICATION

(For Federal Aid for Development of Public Airports)

Part I-PROJECT INFORMATION

The PORT OF NEW YORK AUTHORITY (herein called the "Sponsor") hereby makes application to the Federal Aviation Agency (hereinafter called the "FAA"), for a grant of Federal funds pursuant to the Federal Airport Act and the Regulations issued thereunder, for the purpose of aiding in financing a project (herein called the "Project") for development of the Teterboro Airport (herein called the "Airport") located in Boroughs of Teterboro, Moonachie, Hasbrouck Heights and the Township of Lyndhurst State of New Jersey.

It is proposed that the Project consist of the following-described airport development:

- (1) Extend (1000'), widen (50') and light Runway 6-24 from 5015' x 100' to 6015' x 150'; construct and light taxiways to serve Runway 6-24; relocate Nav aids and remove and light obstructions.
- (2) Extend (2000') light and widen Runway 1-19; construct parallel taxiway and other associated taxiway and runway improvements.
- (3) Land acquisition - Parcels designated as "A" "B" and "C"

all as more particularly described on the property map attached (hereto as Exhibit "A") * ~~(and Exhibit "A" to Project Application dated xxxxxxxxxxxx xxxxxxxx for Project No. xxxxxxxxxxxx) and in the plans and specifications submitted to the FAA on xxxxxxxxxxxx which are made a part hereof.~~

*Strike out the inappropriate clause.

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THE FOLLOWING IS A SUMMARY OF THE ESTIMATED COST OF THE PROJECT:

ITEM	TOTAL ESTIMATED COST	ESTIMATED SPONSOR'S SHARE OF COST		ESTIMATED FEDERAL SHARE OF COST	
		AMOUNT	PER- CENT	AMOUNT	PER- CENT
1. LAND COSTS	4,300,000	2,150,000	50	2,150,000	50
2. CONSTRUCTION COSTS					
3. ENGINEERING AND SUPERVISION COSTS					
4. ADMINISTRATIVE COSTS	500,000				
5. Total of 2, 3, and 4 above					
6. CONTINGENCIES					
7. TOTAL ALL ESTIMATED PROJECT COSTS (Items 1, 5, and 6)		All other amounts to be inserted			

Part II-REPRESENTATIONS

The Sponsor hereby represents and certifies as follows:

1. **Legal Authority.**—The Sponsor has the legal power and authority: (1) to do all things necessary in order to undertake and carry out the Project in conformity with the Act and the Regulations; (2) to accept, receive, and disburse grants of funds from the United States in aid of the Project, on the terms and conditions stated in the Act and the Regulations; and (3) to carry out all of the provisions of Parts III and IV of this Project Application.

2. **Funds.**—The Sponsor now has on deposit, or is in a position to secure, \$_____ for use in defraying the costs of the Project. The present status of these funds is as follows:

The Airport property was acquired by purchase or otherwise and has been fully paid for from Port Authority funds.

Funds for construction will be available from existing cash deposits or from the sale of bonds which the Sponsor is authorized to issue and in support of which the Sponsor may pledge its General Reserve Fund, Chapter 802, Laws of New York, 1947; Chapter 43, Laws of New Jersey, 1947.

3. **Compatible Land Use.**—The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

The Sponsor has and will continue to maintain active liaison with the planning officials of communities adjacent to the Airport. This will assure, to the extent possible, that changed uses authorized by the municipalities are compatible with airport operations.

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TETERBORO AIRPORT
STATEMENT PURSUANT TO PART 151.26
PARAGRAPH (b) FEDERAL AVIATION REGULATIONS
EFFECTIVE JANUARY 27, 1967

In recognition of the interests of the communities at and near the Airport, the overall development plan has been given wide publicity through various communications media. To the best of our knowledge no objection has been made to the specific plans contained in this Project Application to which this is attached or to the proposed overall development plan for the Airport of which this work is a part.

(Any information to the contrary to be added)

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4. **Approvals of Other Agencies.**—The Project has been approved by all non-Federal agencies whose approval is required, namely:

NEW JERSEY DEPARTMENT OF TRANSPORTATION

TRI-STATE TRANSPORTATION COMMISSION

5. **Defaults.**—The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

(Any information to the contrary to be added)

6. **Possible Disabilities.**—There are no facts or circumstances (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out

and complete the Project or carry out the provisions of Parts III and IV of the Project Application, either by limiting its legal or financial ability or otherwise, except as follows:

(Any information to the contrary to be added)

7. Land.—(a) The Sponsor holds the following property interest in the following areas of land' which are to be developed or used as part of or in connection with the Airport, subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

(Any information to the contrary to be added)

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

'State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map. (9-44)

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..(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land' on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

NONE

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land' which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

NONE

'State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.

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Part III-SPONSOR'S ASSURANCES

In order to furnish the assurances required by the Act and Regulations the Sponsor hereby covenants and agrees with the United States, as follows:

1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

2. The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds, and classes: *Provided*, That the Sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; *And Provided Further*, That the Sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

3. The Sponsor will not grant or permit any exclusive right for the use of the airport forbidden by Section 308 of the Federal Aviation Act of 1958, and will otherwise comply with all applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right for the conduct of any aeronautical activities on the Airport, including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity: *Provided*, That the prohibition against the grant or permit of an exclusive right as set forth herein in no way alters the rights or obligations of the Sponsor under a surplus property instrument of transfer pursuant to which surplus property was conveyed to the Sponsor by the United States pursuant to the *Surplus Property Act of 1944*, (61 Stat. 678), as amended.

4. The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in its operation and the operation of all facilities on the airport, neither it nor any person or organization

occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

b. That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to render to the public any service (including the furnishing or sale of any aeronautical parts, materials, or supplies) essential to the operation of aircraft at the Airport, the Sponsor will insert and enforce provisions requiring the contractor:

(1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; *Provided*, That the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance and repair) that it may choose to perform.

d. In the event the Sponsor itself exercises any of the rights and privileges referred to in subsection b. the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the Sponsor under the provisions of such subsection b.

5. Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a nonaeronautical nature or to obligate the Sponsor to furnish any particular nonaeronautical service at the Airport.

6. The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes: *Provided*, That nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; *And Provided Further*, That nothing herein shall be construed as requiring the maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Sponsor.

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7. Insofar as it is within its power and reasonably possible, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Section A of FAA Technical Standard Order No. N18, or Advisory Circular (AC) No. 150/5300-1, whichever is applicable according to the currently approved airport layout plan. In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land.

8. All facilities of the Airport developed with Federal aid and all those usable for the landing and taking off of aircraft, will be available to the United States at all times, without charge, for use by military and naval aircraft in common with other aircraft, except that if the use by military and naval aircraft is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Sponsor and the using agency, substantial use of an airport by military and naval aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more military or naval aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of military or naval aircraft is 300 or more, or the gross accumulative weight of military or naval aircraft using the Airport (the total movements of military or naval aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

9. Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal Government, for construction, operation and maintenance of facilities for air traffic control activities, or weather reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor as the FAA may consider necessary or desirable for construction at Federal expense of space or facilities for such purposes. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the Project. Such areas or any portion thereof will be made available as provided herein within 4 months after receipt of written request from the FAA.

10. The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such

manner as the Sponsor elects so long as the essential data are furnished. The Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations, and other instruments, will be made available for inspection by any duly authorized representative of the FAA upon reasonable request. The Sponsor will furnish to the FAA, upon request, a true copy of any such document.

11. The Sponsor will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency found by the FAA to be eligible under the Act and Regulations to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Airport by any agency or person other than the Sponsor or an employee of the Sponsor, the Sponsor will reserve sufficient rights and authority to insure that the Airport will be operated and maintained in accordance with the Act, the Regulations, and these covenants.

12. The Sponsor will keep up to date at all times an airport layout plan of the Airport showing (1) the boundaries of the Airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes, and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon. Such airport layout plan, and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the airport layout plan. The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport.

13. Insofar as is within its power and to the extent reasonable, the Sponsor will take action to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft.

14. If at any time it is determined by the FAA that there is any outstanding right or claim of right in or to the Airport property, other than those set forth in Part II, paragraphs 7(a), 7(b), and 7(c), the existence of which creates an undue risk of interference with the operation of the Airport or the performance of the covenants of this Part, the Sponsor will acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

15. Unless the context otherwise requires, all terms used in these covenants which are defined in the Act and the Regulations shall have the meanings assigned to them therein.

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Part IV-PROJECT AGREEMENT

If the Project or any portion thereof is approved by the FAA, and an offer of Federal aid for such approved Project is accepted by the Sponsor, it is understood and agreed that all airport development included in such Project will be accomplished in accordance with the Act and the Regulations, the plans and specifications for such development, as approved by the FAA, and the Grant Agreement with respect to the Project.

IN WITNESS WHEREOF, the Sponsor has caused this Project Application to be duly executed in its name, this _____ day of _____, 19____

APPROVED: New Jersey State
Department of Transportation THE PORT OF NEW YORK AUTHORITY

(Name of Sponsor)

BY: _____
Director, Division of Aeronautics

By _____

Austin J. Tobin
Executive Director

(Title)

OPINION OF SPONSOR'S ATTORNEY

I HEREBY CERTIFY that all statements of law made in this Project Application and all legal conclusions upon which the representations and covenants contained herein are based, are in my opinion true and correct.

Assistant General Counsel

(Title)

(Date)

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SPONSOR ASSURANCE TO ACCOMPANY PROJECT APPLICATION DATED
FOR A GRANT OF FUNDS FOR THE DEVELOPMENT OR IMPROVEMENT OF THE
TETERBORO AIRPORT

Non-discrimination in Federally-assisted Programs of the FAA. In order to furnish the assurances required by Title VI of the Civil Rights Act of 1964, and by Part 15 of the Federal Aviation Regulations, as amended, The Port of New York Authority (hereinafter called the "Sponsor") hereby covenants and agrees with the United States (hereinafter called the "Government") as follows:

The Sponsor in the operation and use of the Teterboro Airport, will not on the grounds of race, color or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 15 of the Federal Aviation Regulations.

The Sponsor will include, or require the inclusion of, the foregoing covenant in every agreement or concession pursuant to which any person or persons, other than the Sponsor, operates or has the right to operate any facility on the Airport providing services to the public, and a provision granting the Sponsor the right to take such action as the Government may direct to enforce such covenant.

Noncompliance with the above assurances shall constitute a material breach, and in the event of such noncompliance the Government may take appropriate action to enforce compliance, may terminate the Grant Agreement to which this covenant relates, or seek judicial enforcement.

The covenant shall become effective upon execution of a Grant Agreement pursuant to the above identified project application and shall constitute part of the Grant Agreement to which it relates and shall remain in full force and effect so long as the airport covered by such agreement continues to be used and operated as a public airport.

With respect to the third paragraph above it is understood that such requirement shall only apply to agreements or concessions executed subsequent to the execution of the Grant Agreement.

With respect to the fourth paragraph above, the Government shall not terminate the Grant Agreement or take other action as referred to in that paragraph unless (a) the Government has first given the Sponsor thirty(30) days' prior written notice of non-compliance by the Sponsor; and (b) the Sponsor does not comply or commence compliance within said thirty(30) days.

The Sponsor desires to have noted that in its case the provisions concerning non-discrimination are superfluous since it has a long and well established policy not to discriminate against any person because of race, creed, color or national origin.

THE PORT OF NEW YORK AUTHORITY

By _____

Executive Director

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AVIATION DEMAND AND AIRPORT FACILITY
REQUIREMENT FORECASTS FOR LARGE
AIR TRANSPORTATION HUBS
THROUGH 1980

August 1967

Department of Transportation
Federal Aviation Administration
Airports Service

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PART I. FORECAST OF AIRPORT AVIATION ACTIVITY, 1970-1980

NEW YORK (L) HUB

AIRPORT AVIATION ACTIVITY	BASE YEAR	ACTIVITY FORECASTS		
	1965	1970	1975	1980
A. <u>AIRCRAFT OPERATIONS (000)</u>				
1. Total Operations	2389.1	3753.2	5463.8	8025.5
a. Itinerant Operations	1360.1	2091.7	2899.6	4057.5
(1) Sched. Air Carrier	588.9	828.5	1050.7	1395.5
(2) General Aviation	748.2	1242.6	1829.3	2642.4
(3) Military	23.0	20.6	19.6	19.6
b. Local Operations	1029.0	1661.5	2564.2	3968.0
(1) General Aviation	1023.6	1657.2	2559.9	3963.7
(2) Military	5.4	4.3	4.3	4.3
B. <u>BUSY HOUR OPERATIONS (NO.)</u>				
1. Sched. Air Carrier	176	213	277	372
2. General Aviation <u>1/</u>	1130	1962	2923	4365
C. <u>ENPLANED PASSENGERS (000)</u>				
1. Total Passengers	12325	22464	38337	64469
2. Sched. Air Carrier	11600	21149	36179	61048
a. Domestic	9290	16951	29000	48940
b. International	2310	4198	7179	12108
3. General Aviation	725	1315	2158	3421
D. <u>AIR CARGO - TONS (000)</u>				
1. Domestic	315	813	2004	5148
2. International	-	-	-	-
E. <u>BASED AIRCRAFT - GEN. AVTN. (NO.)</u>				
1. Total Based Aircraft	1755	2593	3411	4360
2. Less than 12,500 lbs.	1330	1862	2346	2933
3. More than 12,500 lbs.	425	731	1065	1427

1/ Not same hour as Air Carrier.

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PART I. FORECAST OF AIRPORT AVIATION ACTIVITY, 1970-1980

NEW YORK (L) HUB

<u>AIRPORT AVIATION ACTIVITY</u>	<u>BASE YEAR 1965</u>	<u>ACTIVITY FORECASTS</u>		
		<u>1970</u>	<u>1975</u>	<u>1980</u>
F. <u>AIRCRAFT MIX (TYPES) - (% Distr.)</u>				
1. Air Carrier - Operations	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
a. Group A	38.0	39.2	38.6	35.8
b. Group B	62.0	60.8	61.4	64.2
c. Group C	-	-	-	-
2. Air Carrier - Passenger/Cargo	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
a. Group X (Over 200 seats)	-	4.0	22.6	40.5
b. Group L (120 - 199 seats)	38.0	43.1	35.3	25.2
c. Group M (75 - 119 seats)	25.2	44.9	39.2	34.3
d. Group S (55 - 74 seats)	24.1	-	-	-
e. Group T (54 seats and under)	12.7	8.0	2.9	-
3. General Aviation - Operations*	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
a. Group C	0.6	4.0	6.8	8.3
b. Group D & E	99.4	96.0	93.2	91.7
4. Military - Operations	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
a. Group B	40.0	40.0	40.0	40.0
b. Group C	60.0	60.0	60.0	60.0

* General Aviation - Passenger/Cargo - all Group T aircraft.

Re Appendix 1 for aircraft group classification code definitions.

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PART II. FORECAST OF SELECTED AIRPORT FACILITY REQUIREMENTS, 1980

NEW YORK (L) HUB

<u>SELECTED AIRPORT FACILITIES</u>	<u>1980 REQUIREMENT FORECASTS</u>
A. <u>Air Carrier</u>	
1. <u>Terminal Apron</u>	
a. Gate Positions (No.)	419
b. Apron Area (Sq. Yds.)	3,762,000
2. <u>Terminal Building</u>	
a. Passenger Handling (Includes ticketing, baggage claim, operations space and passenger hold areas; excludes freight and cargo space) (Sq. Ft.)	3,150,000
b. Circulation, utilities and public conveniences (Sq. Ft.)	4,359,000
c. Concession Space (Sq. Ft.)	1,355,000
d. Total Area, Terminal Building (Sq. Ft.)	8,864,000
3. <u>Federal Inspection Facilities, Passenger</u> (Sq. Ft.)	545,000
4. <u>Public Vehicular Parking Areas</u>	
a. Vehicular Parking Spaces (No.)	55,000
b. Area (Sq. Yds.)	1,951,000
5. <u>Cargo Facilities</u>	
a. Gate Positions (No.)	100
b. Apron Area (Sq. Yds.)	865,000
c. Cargo Building (Sq. Ft.)	1,986,000
d. Vehicular loading and unloading area	
(1) Spaces (No.)	163
(2) Area (Sq. Yds.)	22,000
B. <u>General Aviation</u>	
1. <u>Aircraft Parking</u>	
a. Apron Space (Unhangared)	
(1) Area (Sq. Yds.)	4,282,000
(2) Aircraft Parking/Tie Down Positions (No.)	4,584

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PART II. FORECAST OF SELECTED AIRPORT FACILITY REQUIREMENTS, 1980

NEW YORK (L) HUB

<u>SELECTED AIRPORT FACILITIES</u>	<u>1980 REQUIREMENT FORECASTS</u>
b. Apron Space (Hangared)	
(1) Area (Sq. Yds.)	2,070,000
(2) Aircraft Parking Positions (No.)	1,308
c. Total Apron Space	
(1) Area (Sq. Yds.)	6,352,000
(2) Aircraft Parking Positions (No.)	5,892
2. <u>Terminal Building, Area (Sq. Ft.)</u>	385,000
3. <u>Public Vehicular Parking Areas</u>	
a. Vehicular Parking Spaces (No.)	10,214
b. Area (Sq. Yds.)	

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BUTLER AVIATION

INDEXExhibit
No.

Statement of Position of Butler Aviation in the Pan American-Farmingdale/Teterboro Airports Agreement Case.

- BA- 1 Testimony of Paul S. Dopp, President, Butler Aviation Company.
- BA- 2 Testimony of L. John Eichner, Vice President, Simat, Helliesen & Eichner, Inc.

THE GEOGRAPHIC MARKET OF THE CASE

- BA- 3 Airports Exclusively Used by General Aviation in the New York Area Available for High Performance
- BA- 4 Total "All Weather" Airports in the New York Area Available for High Performance Aircraft.

- BA- 5 The Importance of the New York Area for the Aviation Industry.

THE PRODUCT MARKET OF THE CASE
HIGH PERFORMANCE AIRCRAFT ARE
GROWING IN IMPORTANCE AND ARE
CRUCIAL TO THE FIXED-BASE
OPERATOR

- BA- 51 High Performance Aircraft Are Growing in Number.
- BA- 52 High Performance Aircraft Are Becoming a More Important Percentage of the General Aviation Industry.
- BA- 53 High Performance Aircraft Are More Important to the Fixed-Base Operators Because of Greater Sales Values, Fuel Consumption, and Use.
- BA- 54 High Performance Aircraft Require More Facilities Than Light Planes.

HIGH PERFORMANCE GENERAL AVIATION
AIRCRAFT ARE BEING SQUEEZED INTO
FEWER AIRPORTS IN THE NEW YORK AREA

- BA-100 If the Pressures Which Now Exist Succeed in Forcing General Aviation Almost Completely Off the Airports Used by the Airlines, the Teterboro and Republic Airports will be the Only Ones Available for General Aviation
- BA-101 News Release of The Port of New York Authority Announcing Increase of General Aviation Landing Fees From \$5.00 to \$25.00 During Peak Traffic Hours at the Kennedy, LaGuardia and Newark Airports.
- BA-102 The Port of New York Authority Has Encouraged General Aviation Users to Use Teterboro.

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Exhibit
No.

- BA-103 The New York Port Authority is Forecasting a Greater Squeeze of General Aviation at the Three Major Airports.
- BA-104 The Airline Policy on General Aviation.
- BA-105 Closing of Secondary General Aviation Airports are

Adding to the Squeeze on General Aviation in the New York Area.

- BA-106 Excerpt from Speech of George A. Spater of American Airlines, Inc.
- BA-107 The Port of New York Authority Notice to General Aviation Operators.

GENERAL AVIATION ACTIVITY AT THE PORT
OF NEW YORK AUTHORITY AIRPORTS

- BA-151 The General Aviation Activity Upon Which the Fixed-Base Operators in the Market Area Rely.
- BA-152 General Aviation Operations at The Port of New York Authority Airports, 1958-1967.

HIGH PERFORMANCE GENERAL AVIATION AIRCRAFT
IN THE NEW YORK AREA ARE CONCENTRATED AT A
VERY FEW AIRPORTS

- BA-201 Multi-Engine General Aviation Aircraft Are Concentrated at the All Weather Airports of the Area.

NEW YORK STATE PLANS FOR FARMINGDALE
(REPUBLIC) AIRPORT

- BA-251 Announcement of Governor Rockefeller Regarding Farmingdale (Republic) Airport.

PAN AMERICAN HAS THE ABILITY TO
RESTRAIN COMPETITION

- BA-301 Pan American Has the Largest Market Share of the Largest International Airline Market in the World.
- BA-302 Excerpts from the New York Airways Certificate Renewal Case, Docket 15661.
- BA-303 Pan American Already Owns 28.4% of the Outstanding Stock of New York Airways.
- BA-304 Pan American Is an Important Factor in the Sale of High Performance Aircraft.
- BA-305 Narrative Statement Relating to Advertising Advantages Which Pan American's Vast Size Give It Over a Small Aviation Service Company.

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<u>Exhibit No.</u>	
BA-306	Pan American Uses Its Airline Strength to Increase Its Sales of High Performance General Aviation Aircraft.
BA-307	Pan American Has Great Marketing Strengths.
BA-308	Pan American Uses Direct Mail Advertising to Tie Together the Sale of High Performance General Aviation Aircraft and its Scheduled Passenger Service.
BA-309	Pan American Can Advertise Its General Aviation Activities at Lower Rates Than Can Butler Aviation.
BA-310	Pan American's Growth Was Heavily Subsidized by Federal Funds.
BA-311	Pan American Press Releases Regarding Teterboro and Republic (Farmingdale) Airports.
BA-312	Pan American Purchases Very Great Quantities of Fuel.
BA-313	Examples of Volume Discount Offered by Manufacturers of Aviation Equipment.
BA-314	Pan American's General Aviation Activities Will Expand.
BA-315	Pan American Encourages General Aviation Traffic to Use Teterboro.
BA-316	Excerpt from "Reply of Pan American World Airways, Inc. to Answer of Braniff Airways, Inc." Docket 19325, December 20, 1967.
BA-317	Excerpts from Pan American's Annual Report for 1966.
BA-318	Pan American's Letter to Pilots Regarding the use of PANACOM.
BA-319	Pan American's Magazine Advertising Volume.
BA-320	Pan American is the Leading U.S. International Carrier.
BA-321	26% of the Pan American System Passengers Enplane or Deplane at New York.

BA-322 Pan American Has Ordered Five S-61 Helicopters.

PAN AMERICAN WILL BE ABLE TO INCREASE ITS
AIRLINE PASSENGER TRAFFIC

BA-351 General Aviation is Responsible for a Large Number
of Connecting Passengers at The Port Of New York
Authority Airports.

BA-352 Scheduled Air Taxi Nonstop Flights to Newark, LaGuardia
and Kennedy Airports.

BA-353 Estimate of Passengers Enplaned and Deplaned in Air
Taxi and Business and Private Operations at
Metropolitan Airports Used by Airlines.

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STATEMENT OF POSITION OF BUTLER AVIATION IN THE PAN AMERICAN-FARMINGDALE/TETERBORO AIRPORTS AGREEMENT CASE

1. This proceeding involves a fundamental policy decision which will have a vital impact upon the development of both general aviation and the airline business not only in the New York area, but throughout the nation. The question is: "Should the airline industry be allowed to control access to, and the use of, general aviation facilities when the airlines and the general aviation industry are in conflict for the use of limited airport space and air space?".

The airlines and the general aviation users are rapidly approaching a dramatic confrontation over the allocation of airport facilities and air space. This problem will first reach a showdown in the New York area, where the problem is most acute. It would be grossly unfair to permit a "back-door" solution to this problem in favor of the airlines by permitting them to gain control of the basic aviation facilities vital to general aviation activities.

If the Board finds it is consistent with the public interest for an airline to control the access to general aviation facilities in the New York area - where the interests of these two groups are already in open conflict - it logically and legally follows that such

control can not be denied in all major cities. Therefore, the Board's decision in this case will set the pattern for the entire nation. The Board must recognize that the question it will decide in this case is whether it is consistent with the public interest to permit the airlines to control access to, and the use of, general aviation facilities throughout the nation.

There are no easy answers to this space allocation problem and it will require the utmost in wisdom, judgment and restraint for the airline industry, the general aviation users, and the governmental agencies involved to reach a fair and equitable solution on an amicable basis. Accommodations and concessions may be required from all concerned with the problem. Permitting Pan American to have a stranglehold on general aviation facilities in the New York area would inevitably inject bitterness, rancor, and discord into a situation which would be difficult to solve under the best of circumstances. The Board cannot expect general aviation to cooperate in the development of "reliever airports" if those airports are going to be controlled by their rivals, the airlines. Thus, the approval of

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this agreement could jeopardize the entire "reliever airport" program. On the other hand, the Board has the opportunity to de-escalate this bitter battle by disapproving the Pan American agreement and thus returning the general aviation users to a fair and equal bargaining position.

It is important to emphasize that there are two things which are not in issue in this proceeding: First, this case does not involve the question of whether or not general aviation should be transferred from LaGuardia and Kennedy Airports to Republic and Teterboro Airports. That question will be decided in other ways by the appropriate governmental agencies and by negotiations between the airlines and general aviation users. However, this proceeding does involve the question of whether or not Pan American should be given an unfair advantage, and the opportunity to bulldoze a solution

to that problem, by controlling access to and the use of general aviation facilities in New York.

Second, Butler does not oppose the expansion of general aviation facilities at these airports. We agree that there is a need for additional general aviation facilities in the New York area and therefore agree that these airports should be developed fully. The only question is whether that expansion and development should be controlled by Pan American. It is Butler's position that this should be done by some governmental agency or other impartial person. The State of New York has announced that it has plans to acquire, develop, and operate Republic Airport. The Port of New York Authority which was established by the States of New York and New Jersey for the specific purpose of developing and operating airports, owns the Teterboro Airport. The Port of New York Authority has the financial ability, as well as the experienced, capable, and efficient personnel necessary to conduct an outstanding airport operation. If The Port of New York Authority prefers that someone else perform this function, there are other capable organizations available to do the job.

Therefore the development of general aviation facilities should not be delegated to Pan American or any other airline, since they have a vital, personal interest in the conflict between the airlines and general aviation users, and since they would inevitably be motivated to develop and operate general aviation facilities under their control in the manner best suited to the needs of air carriers, rather than general aviation.

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TESTIMONY OF

PAUL S. DOPP, PRESIDENT

BUTLER AVIATION COMPANY

My name is Paul S. Dopp and I am the President of Butler Aviation Company. Our company is engaged in the aviation service business which is often referred to by the term "fixed-base operation" or "FBO" for short. We operate at LaGuardia and 11

other airports in this country. Although accurate financial information is lacking as to such companies because few are publicly held, Butler is probably one of the five largest companies in this business.

The aviation service business operates from places of business located on airports and involves a wide range of activities connected with aviation, including the following: (1) the sale of aircraft fuel and lubricants; (2) the delivery of fuel into aircraft as agent for oil companies; (3) aircraft maintenance and repair; (4) the sale and installation of avionics (communications and navigation equipment) and other aircraft equipment; (5) the provision of hangar storage space and outdoor tie-down locations for aircraft; and (6) the performance of turn-around services for airlines (providing portable stairs, baggage handling, interior cleaning, de-icing and visual inspection of equipment between flights, etc.). Butler engages in each of these activities at LaGuardia, but the range of activities varies at other airports we serve throughout the country.

We also provide various flight services, which include helicopter flight services and contract flight services. Finally, we are now the distributor of the Dornier Skyservant, a twin engine, 12 passenger aircraft which has STOL characteristics.

Since these aviation services must be performed at an airport, it is impossible to be in the aviation service business without an agreement with the airport operator. Although this agreement is usually referred to as a lease, it is actually a combination of a lease and an operating agreement granting a franchise to perform certain services on the airport. The typical agreement will lease to the fixed-base operator one or more hangars, office and shop space, and a ramp area. It will also specify the particular uses to which that property may be put (e.g., the sale of aviation fuel) and thus, in

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effect, grants the company a franchise to engage in certain types of business on the airport. The rent or fees payable to the operator of the airport typically will include a fixed-base rent based on the amount of space leased, a payment for each gallon of fuel sold, and possibly a percentage of certain receipts other than from fuel sales.

A lease and/or operating agreement is also necessary to engage in many other types of business activity on an airport, e.g., the sale of aircraft, air taxi operations, charter and other flight services, flying schools, etc. Therefore, the very existence of these businesses also depends on the ability to secure a lease and/or operating agreement from the airport operator.

The usual method of acquiring such a lease/operating agreement is by direct negotiations with the airport operator. Under the best of circumstances, these negotiations are long and involved and require complete agreement on a wide range of matters before an agreement can be reached. For example, the matters upon which agreement must be reached include the space to be occupied; the improvements, if any, which the airport operator will make on land or buildings; the uses to which the land and buildings can be put; the rental for the buildings and land; the percentage to be given the airport operator on revenues derived from the sale of gasoline or other services; the length of the lease; the cancellation provisions; and other terms, conditions, and restrictions that the company will operate under. If the airport operator does not wish to reach an agreement with a particular company, it does not have to refuse to deal with the company. All it has to do is determine during the course of the negotiations which of the multitude of negotiable items the company considers crucial to it and hang up on those items.

Moreover, the airport operator can always refuse to lease land, for example, for the sale of executive jet aircraft

because in its opinion that particular piece of land would be more properly used for other functions. Finally, it is generally understood that the airport operator has the right to request detailed financial information and to refuse to enter into an agreement with any company which, in its opinion, is not financially secure. All of these factors, plus the ability to delay and frustrate a prospective applicant by deferring and postponing negotiating conferences, makes it possible for an airport operator to deny a lease or operating right to any prospective applicant without appearing to do so.

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Once the fixed-base operator or other tenant of the airport secures a lease/operating agreement, he becomes even more dependent upon the good will of the airport operator. Many of these agreements have clauses which provide for cancellation on short notice. For example, some agreements permit The Port of New York Authority to cancel on 30 days' notice without giving any reasons for the cancellation.

Moreover, when the lease/operating agreement comes up for renewal, the company is in a far worse bargaining position than it was when it originally sought approval to operate on the airport. It then has a substantial investment in the facilities necessary to conduct its operation and has built up a going concern and goodwill value which will be lost if it is unable to renew its lease. It has also acquired a substantial number of employees who are dependent upon it for their livelihood and it is conscious of its responsibility to provide for their welfare by insuring the renewal of its lease/operating agreement. Finally, the lessee may be dependent upon the goodwill of the airport operator for a number of other essential items, such as repairs or improvements in its buildings and facilities. Under these circumstances, the lessee naturally

assigns top priority to maintaining a good working relationship with the airport operator. It simply would not be good business judgment for a company in such a position to become embroiled in controversy with the airport operator.

The agreements in question give Pan American the right to engage in fixed-base operations at either airport, to provide the fullest possible range of general aviation services, and to select for itself the best locations for such operations. Any other operator that attempts to compete with Pan American would have a difficult time because of the many advantages enjoyed by Pan American.

First of all, Pan American would be able to choose the best location at the airport for its own fixed-base operation. A favorable location can be a vital factor in the volume of business you receive. Conversely, Pan American could relegate its competitor to an unfavorable location.

Second, the company would find itself in the position of competing with its landlord. This would be a most uncomfortable position since it would be dependent upon the landlord for many services and ultimately for the renewal of its lease and operating rights.

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TESTIMONY OF
L. JOHN EICHNER

My name is L. John Eichner. I am a partner of Simat, Helliesen & Eichner, Inc., an organization that engages in marketing and economic studies in the field of transportation for commercial and government clients. My offices are located at 342 Madison Avenue, New York, New York and I reside in Greens Farms, Connecticut.

A statement of my qualifications is attached.

All of the Butler Aviation direct exhibits were prepared under my direct supervision and control.

Many studies and reports have been made of aviation in the New York area by government bodies, by private organizations, and by The Port of New York Authority itself. Because of the very short time available to us, we have limited ourselves to the reports and research which has already been published and were not able to make any new surveys of general aviation users classified by purpose of trip and by expenditures with fixed-base operators at various locations.

There appeared to be no need to do so.

The research at hand demonstrates beyond doubt that there are no other airports in The Port of New York Authority and Nassau County area that can be considered to be in the same class as the Teterboro and Republic Airports about which this case is centered. The Tri-State Transportation Committee, appointed by the Governors of New York, New Jersey and Connecticut in 1961 to develop long-range solutions to the transportation problems of the region, made a detailed and comprehensive study in 1965 of the airport problems facing general aviation. They defined an airport of the Teterboro and Farmingdale class as "All Weather (#1)". Their criteria were that such an airport had to have a paved runway with a minimum length of 5,000 feet, night-time nav aids, high intensity lighting, tower, ILS, attendant and fuel.

Out of 12 airports in the area of this case, there are only four such All Weather airports. Those are the New York Port Authority airports of Newark, LaGuardia, John F. Kennedy and Teterboro. The Teterboro is the only airport available exclusively for general aviation aircraft and which is readily accessible to the core of the New York area. The Republic Airport at Farmingdale, which is outside the PNYA area and which is considerably farther from Manhattan, will presumably meet the

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"All Weather (#1)" standards when it is taken over because it has sufficient runway length, it has the control tower, it has

weather services, and public announcements have been made that extensive additional improvements are planned.

The remaining seven airports have various problems. Many are quite small, such as Hanover, with runways of less than 3,000 feet. Others, such as Hadley, the nation's oldest existing airport, and Totowa Wayne, are expected to be closed shortly, just as Mitchell Field and many others have been closed since World War II. Zahn's, too, will close as part of the Farmingdale expansion program. Flushing, because it is next door to LaGuardia, is restricted by location to being a VFR airport and cannot be made an all weather field. Linden lacks tower, ILS, or radar.

If general aviation were to be forced out of LaGuardia because of scheduled air carrier operations, there would be no place for an airplane such as a Falcon jet to be based in Kings, Queens, or Nassau Counties by a business firm. The closest airport to the east would be the Republic (Farmingdale) Airport on the border of Suffolk County. The closest to the west of Manhattan would be Teterboro.

The executive jet market, with its growing importance, must be regarded as the prime future market of the fixed-base operator in metropolitan areas. The jets are utilized more hours of the year than a small single engine piston plane and thus require more services. The jets have more expensive and elaborate equipment. The jets consume more gallons of fuel

The executive jets, such as the LearJet, the Sabreliner, the Lockheed, and the Fan Jet Falcon manufactured in France and marketed in the U.S. by Pan American, are prime examples of the high performance general aviation aircraft market. Generally speaking, in the exhibits such as BA-54, we have followed The Port of New York Authority's broad categorization of general aviation aircraft as heavy multi-engine, light multi-engine, or single engine.

Evidence in support of the above statements is contained in the exhibits numbered 3 through 202.

The remaining 300-series exhibits are factual descriptions of Pan American's publicity, marketing, and other advantages, and publicly-announced activities which are relevant to the issues of this case. The forecast of connecting passengers requested in the Bureau's Statement of Issues is developed in BA-351 and BA-352.

1415

AIRPORTS EXCLUSIVELY USED BY GENERAL AVIATION IN THE NEW YORK AREA AVAILABLE FOR HIGH PERFORMANCE AIRCRAFT

The Teterboro Airport is the only airport available for high performance aircraft and used exclusively by general aviation in the Port of New York Authority area. The area covered by the Port is shown on page two of this exhibit.

Characteristics of the airports in this general area are summarized in Exhibit BA-4.

"Of the six airports within ten miles of Manhattan, four are operated by The Port of New York Authority. Teterboro, owned and operated by The Port of New York Authority, is the only Port Authority airport that caters exclusively to general aviation traffic. The other three Port Authority airports serve both scheduled airlines and general aviation. Flushing Airport, situated across the bay from LaGuardia, is owned by New York City but is leased to a private operator. This airport, rated as "adequate", is a relatively small field with an approach pattern somewhat obstructed by the close proximity of large apartment houses and a gas storage tank. Staten Island Airport, the only privately-owned field, ceased operations on June 1, 1964.

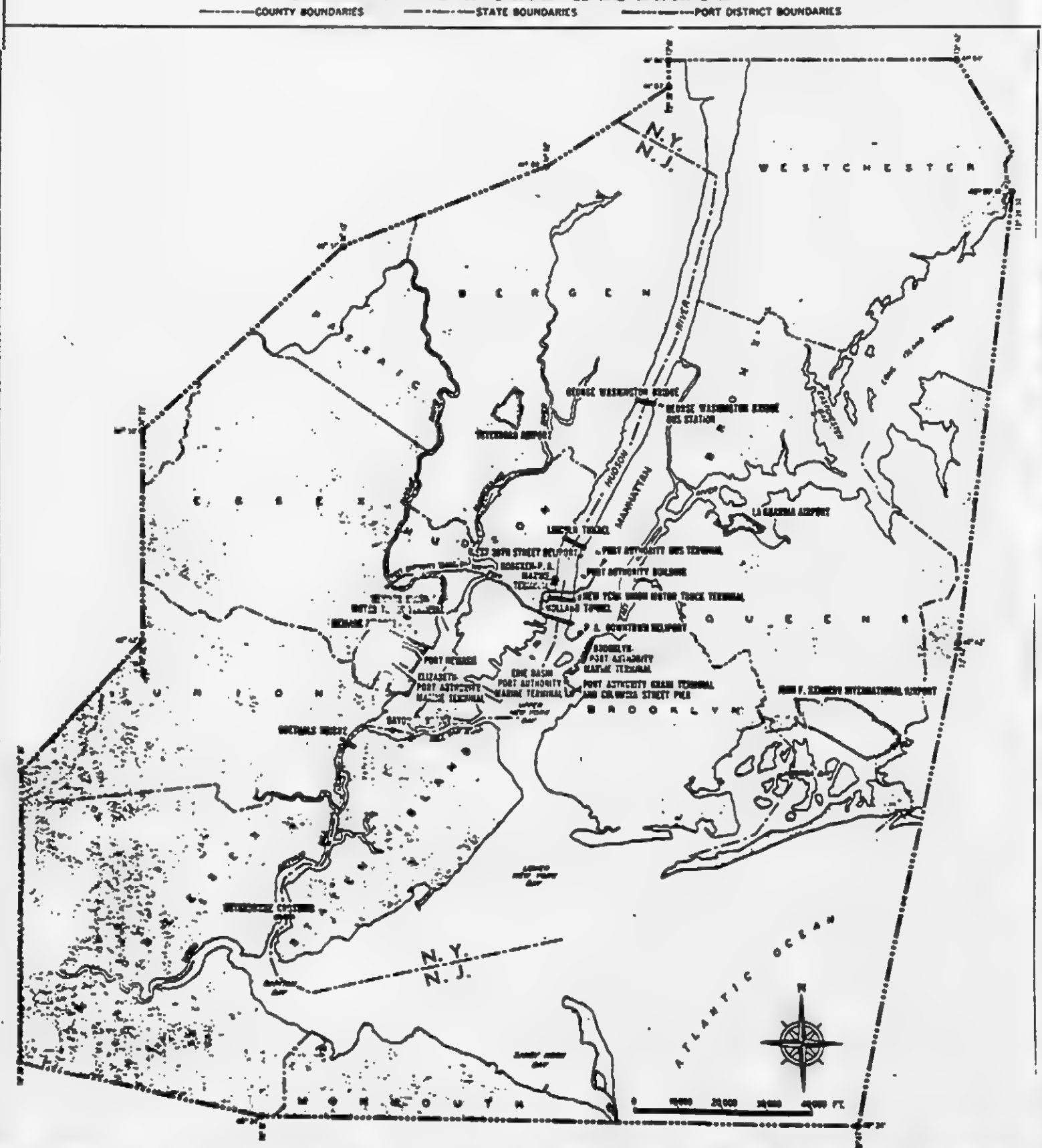
"There are three additional airports within a 20-mile radius of Times Square - all located in New Jersey. These are: Linden, a publicly owned facility in Union County; Caldwell-Wright in Morris County, formerly a company-owned field opened

to public use in 1963; and Totowa-Wayne, opened after World War II and located outside of Paterson." 1/

1/ Source: Tri-State Transportation Committee - General Aviation, May 1965, page 8.

1416

FACILITIES OF THE PORT OF NEW YORK AUTHORITY AND THE PORT DISTRICT



1418

TOTAL "ALL WEATHER" AIRPORTS IN THE NEW YORK
AREA AVAILABLE FOR HIGH PERFORMANCE AIRCRAFT

Criteria for "all weather airports" developed by the Tri-State Transportation Committee (1965) include: a paved runway with a minimum length of 5,000 feet, night time nav aids, high intensity lighting, tower, ILS, attendant and fuel.^{1/}

The only airports, in the subject area, that meet these criteria are:

Airport	Airport Has:				5000' Minimum Runway Length
	Tower	ILS	Radar		
Newark, N.J.	Yes	Yes	Yes	Yes-6,796'	and 7,000'
Teterboro, N.J.	Yes	Yes	Yes	Yes-5,000',	5,015' and 3,525'
J.F. Kennedy, N.Y.	Yes	Yes	Yes	Yes-14,572',	10,000 and 11,35
La Guardia, N.Y.	Yes	Yes	Yes	Yes-7,000',	7,000' and 1,600'

The following airports in the subject area do not meet these criteria:

Airport	Airport Has:				5000' Minimum Runway Length
	Tower	ILS	Radar		
Caldwell, N.J.	Yes	No	No	No-4,200'	and 4,700'
Hanover, N.J.	No	No	No	No-2,000'	
Linden, N.J.	No	No	No	No-2,780',	4,137' and 3,000'
Paterson, N.J.	No	No	No	No-2,850'	
South Plainfield, N.J.	No	No	No	No-2,345',	2,000' and 1,550'
Amityville (Zahn's) N.Y. ^{2/}	No	No	No	No-4,021'	and 2,950'
Farmingdale, N.Y. ^{2/}	Yes	No	No	Yes-7,500'	and 6,597'
Flushing, N.Y.	No	No	No	No-2,880'	and 2,825'

^{1/} Tri-State Transportation Committee, General Aviation Airports for the Future, New York, N.Y. (March 1965).

^{2/} Not in PNYA area but added to list for information purposes.

1419

THE IMPORTANCE OF THE NEW YORK
AREA FOR THE AVIATION INDUSTRY

The importance of the New York Area for the aviation industry is well-known. In calendar year 1966 the certificated air carriers enplaned 110,133,923 passengers in the 50 states of the U.S., and the District of Columbia, on scheduled services. Of this total, 12,310,247 were enplaned at the three major New York Airports--Kennedy, La Guardia and Newark.^{1/} This means that one out of every nine airline passengers in the U.S. enplaned in New York. Although deplanements are not reported, it is generally agreed that they follow the same pattern as enplanements.

In calendar year 1966, at the three major airports plus Teterboro, there were 545,206 general aviation plane movements. These included: air taxi 124,601; business and private 290,303; government 5,804 and local school 124,498.^{2/} During the same year there were 581,962 domestic and overseas airline plane movements. For calendar year 1967 the comparable figures were 527,678 general aviation and 690,947 domestic and overseas airline plane movements.^{3/}

Thus the New York area constitutes a significant marketing area for both general aviation and air transportation. In fact, it is probably the largest and most significant area in these two categories.

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- ^{1/} Department of Transportation, Federal Aviation Administration, Airport Activity Statistics of Certificated Route Air Carriers, U.S. Government Printing Office, Washington D.C. (June 1967).
- ^{2/} Port of New York Authority, Aviation Department, Airport Statistics thru December 1966, New York (1967).
- ^{3/} Port of New York Authority, "Monthly Summary Report of Airport Activities", January 1968.

1422

HIGH PERFORMANCE AIRCRAFT ARE BECOMING A MORE
IMPORTANT PERCENTAGE OF THE GENERAL AVIATION INDUSTRY

A. High performance aircraft are increasing in importance in the general aviation industry:

U.S. Eligible General Aviation Aircraft on December 31:^{1/}
1965-1970^{a/}

Type of Aircraft	1965	1966	1967	1968	1969	1970
Total, all aircraft	95,442	102,200	107,300	112,600	118,000	123,400
Fixed wing	93,939	100,590	105,530	110,680	115,925	121,170
Multi-engine ^{b/}	11,977	13,400	14,700	16,000	17,400	18,800
Single engine 4 place and over <u>c/</u>	49,789	54,700	58,300	62,100	65,900	69,700
All other fixed wing ^{d/}	32,173	32,490	32,530	32,580	32,625	32,670
Rotorcraft ^{e/}	1,503	1,610	1,770	1,920	2,075	2,230
Multi-engine as percent of total	12.5%	13.1%	13.7%	14.2%	14.7%	15.2%

a/ 1966-70 forecasts: Aviation Forecasts: Fiscal Years 1966-71, Federal Aviation Agency, Office of Policy Development, Economics Division.

b/ Includes 555 turbines.

c/ Includes 19 turbines.

d/ Includes gliders, balloons and blimps.

e/ Includes 54 turbine helicopters.

B. Turbine-powered aircraft are becoming more important:

"A year ago three significant trends could be cited. The same three still hold true today. They are the relatively high

1/ FAA Statistical Handbook of Aviation, 1966 Edition.

acceptance rate for turbine-powered, corporate and twin-engined aircraft; growth in the commuter/scheduled air taxi airline element and the continual growth in flight training activity.

"In January 1965 there were 72 turbojet aircraft on record: 3 Jet Commanders, 2 DH-125's, 4 Lear Jets, 45 Jet Stars, 55 Sabreliners and 6 Fan Jet Falcons. At the beginning of 1966 this group had grown to 233 units: 34 Jet Commanders, 21 DH-125's, 72 Lear Jets, 45 Jet Stars, 55 Sabreliners and 6 Falcons.

1423

HIGH PERFORMANCE AIRCRAFT ARE BECOMING A MORE IMPORTANT PERCENTAGE OF THE GENERAL AVIATION INDUSTRY

"At the start of 1967 there were on record, 454 turbojet business aircraft in the U.S. inventory. Included were 86 Jet Commanders, 50 DH-125's, 113 Lear Jets, 70 Jet Stars, 88 Sabreliners, 46 Fan Jet Falcons and the first unit of the new Grumman G-1159 Gulfstream II.

"On the turboprop side of the ledger the story is equally good. In January 1965 there were 179 aircraft of record: 5 King Airs, 131 Gulfstreams, 42 F-27's and one Turbo Commander. In 1966 this had climbed to 7 Turbo Commanders, 67 King Airs, 149 Gulfstreams, 44 F-27's and one Mooney MU-2. In January 1967 the inventory included 40 Turbo Commanders, 164 Gulfstreams, 45 F-27's, 159 King Airs, 4 Swearingeng Merlin II's and 7 Mooney MU-2's..."^{1/}

C. 250 Turbine-powered general aviation aircraft delivered in 1967:

"In 1967 more than 250 of the general aviation airplanes delivered were turbine-powered. Included in this number were 34 Lear Jets, 19 Lockheed Jet Stars and 24 Sabreliners..."^{2/}

D. There has been a marked increase in the number of high-performance aircraft based at the four all-weather general aviation airports in this area of this case.

This information is shown in the following table:

Number of Based Aircraft

	<u>1959^{3/}</u>			<u>1967^{4/}</u>		
	<u>Single Engine</u>	<u>Multi- Engine</u>	<u>Total</u>	<u>Single Engine</u>	<u>Multi- Engine</u>	<u>Total</u>
Kennedy	15	12	27	0	4	4
LaGuardia	10	11	21	34	32	66
Newark	7	10	7	1	15	16
Teterboro	<u>169</u>	<u>53</u>	<u>222</u>	<u>214</u>	<u>90</u>	<u>304</u>
	201	86	287	249	141	390

High performance general aviation aircraft, based at these four airports, increased from 30% of the total in 1959 to 36% of the total in 1967. Kennedy has almost been completely eliminated as a base of general aviation aircraft.

1424Footnotes

- 1/ "American Aviation", May 1967, p. 164.
- 2/ Aerospace Industries Assoc. of America, Press Release, January 17, 1968.
- 3/ Source: Federal Aviation Agency - Distribution of General Aviation Aircraft, Washington, D.C. (August 1960). The figures on the number of general aviation aircraft based at individual airports, by use category, are the totals of the general aviation aircraft which were inspected during calendar year 1959 and were based at those airports at the time of their last calendar year 1959 inspection. They exclude general aviation aircraft which were based at these airports, but were not inspected during calendar year 1959. In spite of these limitations, however, the figures do provide some measure of the relative magnitude of general aviation activity at the various airports.
- 4/ Source: Federal Aviation Agency, Airport Facilities Record, Forms FAA 29A and 29.

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Exhibit BA-53
Page 1 of 4

HIGH PERFORMANCE AIRCRAFT ARE MORE IMPORTANT
TO THE FIXED-BASE OPERATORS BECAUSE OF
GREATER SALES VALUE, FUEL CONSUMPTION AND USE

General aviation aircraft use increases with the higher performance of the aircraft, as shown by the following table^{1/}:

Number of Aircraft and Estimated Hours Flown in
General Aviation, by Type of Aircraft: 1965

<u>Type of Aircraft</u>	<u>Aircraft</u>		<u>Hours</u>		<u>Average Hours Per Aircraft</u>
	<u>Number</u>	<u>Percent</u>	<u>Number</u> (000)	<u>Percent</u>	
<u>Total, All Types</u>	<u>95,442</u>	<u>100%</u>	<u>16,733</u>	<u>100%</u>	<u>181</u>
Single-engine, 1-3 Places	31,358	32	4,521	27	147
100 hp and less	21,895	22	3,029	18	141
Over 100 hp	9,463	10	1,492	9	159
Single-engine, 4 Places and Over	49,776	52	8,506	51	177
200 hp and less	27,054	28	4,686	28	179
Over 200 hp	22,722	24	3,820	23	174
Multi-engine, Piston a/	11,422	12	2,999	18	273
800 hp and less	8,762	9	2,079	12	250
801-2,000 hp	1,532	2	471	3	300
Over 2,000 hp	1,128	1	449	3	409
Turbine	574	1	191	1	454
Rotorcraft	1,503	2	450	3	317
Gliders, Balloons, etc.	809	1	66	b/	90

a/ Horsepower groups are based on total rated horsepower, all engines.

b/ Less than 0.5 percent.

The rising trend of jet aircraft in general aviation emphasizes the increasing importance of this category of high performance aircraft, as shown by the following table which tabulates fuel consumed by general aviation aircraft over several years^{2/}.

1/ F.A.A. Statistical Handbook of Aviation, 1966 Edition.

2/ Same source.

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Estimated Miles Flown and Fuel Consumed
In General Aviation Flying: 1936-65 a/

Year	Miles Flown (000)	Fuel Consumed (000 Gal.)		
		Gasoline	Jet Fuel b/	Oil
1936	93,320	10,451	--	317
1937	103,196	10,618	--	311
1938	129,359	10,201	--	288
1939	177,868	16,394	--	460
1940	264,000	22,400	--	660
1941	346,303	29,300	--	866
1942	293,593	24,900	--	734
1946	874,740	98,576	--	2,191
1947	1,502,420	156,668	--	3,482
1948	1,469,540	179,368	--	3,986
1949	1,128,992	131,766	--	2,928
1950 ^{c/}	1,061,500	131,200	--	2,916
1951	975,480	131,833	--	2,930
1952	972,055	137,846	--	3,063
1953	1,045,346	168,948	--	3,379
1954	1,119,295	176,649	--	3,397
1955 ^{c/}	1,216,000	190,000	--	3,450
1956 ^{c/}	1,315,000	198,000	--	3,470
1957	1,426,285	209,868	--	3,498
1958 ^{c/}	1,660,109	205,208	--	3,345
1959 ^{c/}	1,716,019	217,864	--	3,571
1960 ^{c/}	1,768,704	242,417	--	3,910
1961 ^{d/}	1,857,946	252,849	--	3,950
1962 ^{d/}	1,964,586	240,784	19,723	3,762
1963 ^{c/}	2,048,574	249,878	31,527	3,867
1964	2,180,818	261,728	41,364	4,089
1965	2,562,380	291,841	81,277	4,554

- a/ 1943-1945, war years, no data available.
- b/ The 1962 general aviation survey made it possible, for the first time, to separate jet fuel from aviation gasoline.
- c/ No survey was conducted covering the noted years. Data for 1958-61 have been revised using a correction factor based on the 1962 survey of aircraft use in general aviation. Data for 1963 are based on hours and use reported on aircraft inspection reports adjusted by the same correction factor.
- d/ The 1962 general aviation survey excluded gliders, dirigibles, and balloons. These data have been adjusted to include them.

In calendar year 1965, of the total number of general aviation aircraft (95,442) only 574 were turbine aircraft. However,

average fuel consumption for 1965 per aircraft was:

Propeller (all types) 3,075

Jet 141,684

Source: F.A.A. Statistical Handbook of Aviation, 1966 Edition.

1427

High performance aircraft are more expensive than other types of general aviation aircraft. This higher sales value offers greater opportunities to fixed-base operators for increased revenues than is the case with other types of general aviation aircraft. Comparative shipment figures for the "big five" general aviation aircraft manufacturers are shown below^{1/}:

BUSINESS/PRIVATE AVIATION "BIG FIVE" (Calendar Year)

Single-Engine Unit Shipments											Twin-Engine Unit Shipments										
No.	Model	Total	1966	1965	1964	1963	1962	1961	1960	1959	No.	Model	Total	1966	1965	1964	1963	1962	1961	1960	1959
1	AE-100	13	13								1	AE-300	392	24	30	39	40	62	70	69	53
2	AE-32	44	43	1							2	AE-360	116	1	1	6	13	18	32	13	32
3	AE-300	360	41	67	58	38	37	44	44	31	3	AE-600	205		1	4	7	36	33	70	52
Total		417	97	48	58	38	37	44	44	31	4	AE-680FP	35	1	5	6	18	5			
1	BE-19	176	176								5	AE-680FL	122	15	22	49	36				
2	BE-23	1,006	94	285	106	387	134				6	AE-680FLP	30	10	15	5					
3	BE-24	137	137								7	AE-680T	34	31	3						
4	BE-33	1,056	73	171	100	132	136	161	238	25	8	AE-720	11					2	3	6	
5	BE-33A	127	127								9	AE-1120	82	50	32						
6	BE-35	2,529	293	291	435	201	202	282	345	480	Total		1,027	132	109	109	114	121	139	155	148
7	BE-35TC	46	46								1	BE-18	348	2	24	57	25	34	36	81	89
Total		5,097	966	747	641	720	492	443	583	505	2	BE-50	228				12	30	33	87	66
1	CE-150	7,777	3,187	1,637	804	472	331	344	354	648	3	BE-835	1,079	48	189	272	285	263	199	23	
2	CE-172	9,483	1,705	1,550	1,401	1,146	889	903	1,015	874	4	BE-C55	241	241							
3	CE-175	1,417				13	50	126	501	727	5	BE-45	247	41	42	3	14	19	62	66	
4	CE-180	1,391	167	157	146	128	122	130	283	258	6	BE-80	322	61	53	79	68	61			
5	CE-182	4,118	993	865	778	642	824	575	667	774	7	BE-28	37	29	8						
6	CE-185	1,169	193	181	116	157	229	293			8	BE-90	207	114	84	9					
7	CE-188	193	193								9	BE-95	496	33	45	42	37	30	45	122	142
8	CE-205	574		1	35	353	165				Total		3,205	569	445	442	341	337	375	379	297
9	CE-206	328	161	126	41						1	CE-310	1,658	281	217	197	128	169	136	290	240
10	CE-206A	734	252	181	240	61					2	CE-320	482	127	91	72	60	64	68		
11	CE-210	1,888	120	224	283	156	281	171	610	43	3	CE-336	195			33	140				
12	CE-210TC	137	137								4	CE-337	313	238	227						
Total		31,209	7,108	4,922	2,864	3,128	2,891	2,542	3,430	3,324	5	CE-401	14	16							
1	M-20C	2,087	187	371	270	232	287	286	172	182	6	CE-402	3	3							
2	M-20D	140	1	7	51	101					7	CE-411	237	115	122						
3	M-20E	1,242	347	297	329	169					Total		3,106	780	707	324	328	233	204	290	240
4	M-20F	237	237								1	M-MU-2	7	7							
Total		3,726	772	775	650	502	387	286	172	182	Total		7	7							
1	PA-12-150	1,729	138	145	119	188	141	199	329	470	1	PA-23-160	512					25	74	102	111
2	PA-22-108	1,838			73	259	333	1,173			2	PA-23-235	128	6	12	14	65	19			
3	PA-22-150	1,136						14	446	676	3	PA-23-250	2,021	442	265	266	203	272	144	329	
4	PA-24-150	1,585									4	PA-30-160	1,348	437	259	438	234				
5	PA-24-220	1,480				33	87	178	275	995	Total		4,019	883	636	720	502	316	218	431	311
6	PA-24-260	620	274	239	107						Single-Engine		39,787	12,495	9,631	7,489	6,207	3,630	5,743	6,111	6,261
7	PA-24-400	147	7	55	85						Twin-Engine		11,244	2,373	1,897	1,615	1,285	1,007	936	1,255	975
8	PA-25-150	731				11	73	206	363	78	Total		71,151	13,868	11,528	9,204	7,492	6,637	6,679	7,366	7,237
9	PA-25-235	2,152	432	634	498	344	224				AE-Aero Commander										
10	PA-28-140	2,454	1,144	762	548						BE-Beech										
11	PA-28-150	286	14	60	37	32	97	24			CE-Cessna										
12	PA-28-160	805		46	42	53	410	227			M-McConey										
13	PA-28-170	2,701	711	409	494	476	165				PA-Piper										
14	PA-28-235	794	95	149	362	190															
15	PA-32-260	821	376	245																	
16	PA-33-300	62	62																		
Total		19,338	3,552	3,139	2,476	1,819	1,823	2,426	1,882	2,219											

^{1/} Source: American Aviation, May 1967, p. 159.

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Sales price of the high-performance aircraft are considerably higher than those of single-engine aircraft. Some comparative prices are^{1/}:

	<u>Single-Engine</u>		<u>Multi-Engine</u>
<u>Aero Commander</u>			
AE-100	\$ 8,800	AE-500U	\$103,000
AE-200	32,000	Jet Commander	750,000
<u>Beech</u>			
BE-C33	27,450	BE-B55	63,950
BE-V35	32,500	BE-A65	124,950
		BE-A90	420,000
<u>Cessna</u>			
CE-150	9,550	CE-310K	59,950
CE-172	10,500	CE-411	108,950
CE-210	28,975		
<u>Mooney</u>			
M-20D	13,995	MU-2B	407,000
M-22	33,950		
<u>Piper</u>			
PA-18-Super Cub	9,280	PA-30-Commanche B	45,680
PA-28-140	8,500	PA-31-Navajo	89,500
PA-28-180C	12,900	PA-31-Turbo Navajo	97,290
PA-24-B	23,990		

^{1/} Source: American Aviation, December 1966

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Exhibit BA-54
Page 1 of 2

HIGH PERFORMANCE AIRCRAFT REQUIRE MORE FACILITIES THAN LIGHT PLANES

The Port of New York Authority found that IFR demand, expressed as a ratio of VFR demand, was greater for "Heavy Multi-Engine" general aviation aircraft than for "Light Multi-Engine" or for "Single-Engine" as follows:^{1/}

TABLE XII

Forecast of VFR Peak Hour General Aviation
Aircraft Movement Demand by Airport

	<u>Kennedy</u>	<u>LaGuardia</u>	<u>Newark</u>	<u>Teterboro</u>	<u>Total</u>
1970	52	86	37	42	217
1975	70	102	46	52	270
1980	88	125	60	64	337

The analysis also developed a mix of general aviation aircraft movements using the criteria of single-engine aircraft four-place and over, light multi-engine aircraft (under 800 horsepower), and heavy multi-engine aircraft (over 800 horsepower and business jets). An aircraft mix analysis was most important in determining the percent of aircraft that would continue to represent demand during IFR or "poor weather" flying conditions. Booz, Allen & Hamilton express demand during IFR conditions in terms of a "degradation factor" which is a ratio of demand under IFR to demand existing on an equivalent VFR or "good weather" day. Because the forecast did not go beyond 1975, it was necessary to extrapolate the "degradation factors" for 1980. These were developed by using a conservative extension of the trend from 1965 to 1975. The "degradation factors" developed by category of aircraft as used in this analysis were:

- 1/ The Port of New York Authority - Airport Requirements and Sites to serve the New Jersey-New York Metropolitan Region, New York (1966), page 22.

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TABLE XIII

Forecast of "Degradation Factors" for
Categories of General Aviation Aircraft

	<u>Heavy Multi-Engine^{1/}</u>	<u>Light Multi-Engine^{2/}</u>	<u>Four-Place Single-Engine^{3/}</u>
1970	67%	42%	5%
1975	76	54	5
1980	80	60	5

Having estimates of peak-hour VFR movements by type of aircraft, the application of the "degradation factors" to those movements determines estimates of peak-hour IFR demand of general aviation during the average peak hour of passenger plane movements, as follows:

TABLE XIV

Forecast of IFR Peak Hour General Aviation
Aircraft Movement Demand by Airport

	<u>Kennedy</u>	<u>LaGuardia</u>	<u>Newark</u>	<u>Teterboro</u>	<u>Total</u>
1970	16	32	14	7	69
1975	27	46	21	12	106
1980	37	61	30	17	145

High performance general aviation aircraft also require additional hangar space, jet fuel, and longer runway lengths.

- 1/ Aircraft types such as the larger E-18 series - Twin Beechcrafts, DC-3's on up through the DC-7's, business jets such as the Lockheed JetStar, Learjet, North American Sabreliner, Jet Commander, Falcon, D.H. 125, etc.
- 2/ Aircraft types such as Cessna 310, Piper Apache, Aero Commander, Twin Beech, etc.
- 3/ Aircraft types such as the Cessna 172, 182, 195, Piper Tri Pacer, etc.

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Exhibit BA-101
Page 1 of 8

NEWS RELEASE OF THE PORT OF NEW YORK AUTHORITY ANNOUNCING INCREASE OF GENERAL AVIATION LANDING FEES FROM \$5.00 TO \$25.00 DURING PEAK TRAFFIC HOURS AT THE KENNEDY, LAGUARDIA AND NEWARK AIRPORTS.

FOR RELEASE: Upon Receipt
November 20, 1967

New York, Nov. 20 - In an effort to relieve congestion and minimize delays at the major airports in the New York-New Jersey Metropolitan Area so that they may provide the greatest service to the

greatest number of the traveling public, The Port of New York Authority plans to increase the minimum flight fees at Kennedy International, LaGuardia and Newark Airports during the daily peak operating periods beginning January 1, 1968.

Announcement of the planned increase in the minimum fees was made today by Austin J. Tobin, Executive Director of the bi-state agency. He noted that "general aviation traffic must be influenced to transfer their operations, whenever possible, away from runways and air traffic control patterns at John F. Kennedy International Airport, LaGuardia and Newark Airports during peak traffic periods."

The minimum take-off fee at present at the three airports is \$5. The proposed minimum fee of \$25 at Kennedy International, LaGuardia and Newark Airports will apply to each aircraft which either lands or takes off during the periods between 8:00 A.M. and 10:00 A.M. Monday through Friday, and from 3:00 P.M. to 8:00 P.M. every day. The minimum take-off fee at Teterboro Airport is \$1.50 for aircraft under 2,500 pounds and \$2.50 for all other aircraft.

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PORT AUTHORITY PLANS TO INCREASE MINIMUM FLIGHT FEES AT KENNEDY INTERNATIONAL, LA GUARDIA AND NEWARK AIRPORTS - 2

The airline members of the Aviation Development Council operating at the three airports also support this plan as part of an urgent program to relieve congestion in peak periods and to make most effective use of available airspace and airport capacity. The Federal Aviation Administration has been informed of the plan.

The planned increase in fees will not apply to helicopters since they operate in patterns which do not contribute to air

traffic congestion nor do they adversely affect airport capacity.

Although the separation of general aviation and airline traffic during peak operating hours will provide some relief, it will not forestall the pressing need for a fourth major airport to serve the area. Mr. Tobin noted that the Port Authority's report "Airport Requirements and Sites to Serve the New Jersey-New York Metropolitan Region 1966" stated:

"To provide all possible capacity pending the availability of such an airport, the Port Authority has been working continuously to expand the existing airports to their maximum practical capacity, and has expended hundreds of millions of dollars to that end. The Port Authority will continue these efforts. It will continue to study and restudy every conceivable plan which can be devised and will implement without delay any such plans which are operationally and economically feasible and practicable. Only through such action and through the completion of a new airport can the region maintain its leadership in air transportation."

The operation of general aviation aircraft at the three major airports has increased substantially in recent years, with the

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greatest growth in peak periods when delays and congestion are most severe. In the busiest peak hour, 51 per cent of LaGuardia Airport's total traffic comprises general aviation movements, 52 per cent at Newark and 30 per cent at Kennedy International.

A major component of the general aviation movements during peak hours is by air taxis. In the busiest peak hour they constitute 70 per cent of general aviation movements at Kennedy, 48 per cent at Newark Airport and 36 per cent at LaGuardia. In total, air taxi movements during that peak hour constitute about one of every four plane movements.

Many of these air taxi and other general aviation movements are conducted in small aircraft which carry only one to four passengers, yet congest airspace and runway capacity as much or more than movements of larger aircraft carrying 100 or more passengers. In addition, they delay the aircraft carrying the larger number of passengers.

In September, a program was undertaken by the Port Authority and the major airlines serving the area to provide additional facilities at general aviation airports, to enable general aviation users to shift their operations away from the other overcrowded airports. This program includes a new scheduled airport coach service between Teterboro Airport and Manhattan; operation and continued development of Teterboro by Pan American World Airways under a 30-year agreement

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with the Port Authority; and the development by Pan Am of Republic Airport in Farmingdale, Long Island.

end

FOR FURTHER INFORMATION ON THE SUBJECT OF THIS RELEASE, PLEASE CALL
THOMAS C. YOUNG (212) 620-7541

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Exhibit BA-101
Page 5 of 8

NEWS RELEASE OF THE PORT OF NEW YORK AUTHORITY ANNOUNCING
DEFERRAL OF INCREASE IN LANDING FEES FOR GENERAL AVIATION

FOR IMMEDIATE RELEASE
December 15, 1967

New York, Dec. 15 - The Port of New York Authority's plan to increase minimum landing fees during peak hours at the major airports to minimize congestion and delays is now planned to go into effect at the end of the winter season, it was announced today by Austin J. Tobin, Executive Director of the

bi-state agency. The new fee structure, which raises the minimum fee from \$5 to \$25 during peak hours, is designed to influence general aviation to transfer their operations away from the major airports whenever possible. It was originally planned to put the new minimum fee into effect on January 1, 1968. The postponement, Mr. Tobin said, is intended to give general aviation operators more time to adjust their plans and schedules.

Mr. Tobin also said that the Port Authority would not put the new minimums into effect until it was convinced that the commercial airlines had developed and would implement a realistic scheduling program for peak hours. "We are fully aware," he said, "that the objectives sought by the establishment of these minimums, the relief of airspace and airport congestion in the peak periods, will not be attained if the commercial airlines fill or overfill the capacity that will be provided by the transfer of general aviation to the non-peak periods or to the other airports."

Under the plan announced by the Port Authority last month, the proposed minimum fee of \$25 at Kennedy International, LaGuardia and Newark

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INCREASED MINIMUM LANDING FEES AT MAJOR AIRPORTS - 2

Airports will apply to each aircraft which either lands or takes off during the periods between 8:00 A.M. and 10:00 A.M. Monday through Friday, and from 3:00 P.M. to 8:00 P.M. every day. The minimum take-off fee at Teterboro Airport is \$1.50 for aircraft under 2,500 pounds and \$2.50 for all other aircraft.

The planned increase in fees will not apply to helicopters since they operate in patterns which do not contribute to air traffic congestion nor do they adversely affect airport capacity.

Plans Discussed with Operators

During the past month, the Port Authority has discussed the plan for the new minimums with air taxi operators and other representatives of general aviation. Several of these organizations and industry groups have requested more time to study the plan and to discuss its effect on their operations.

Mr. Tobin said that "the Port Authority understands and can certainly sympathize with the problems of general aviation and particularly the air taxi operator, and has therefore acceded to the requests for a postponement of the effective date beyond January 1."

This year some 34,500,000 passengers will use Kennedy, Newark and LaGuardia Airports. Well over 99 per cent of them will have flown in and out of those airports on transport aircraft carrying up to 200 passengers. During the peak hours, planes land and take off at these three airports at the rate of one every twenty seconds.

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Growth of General Aviation

In announcing the plan for the new minimums last month, Mr. Tobin pointed out that the operation of general aviation aircraft at the three major airports has increased substantially in recent years, with the greatest growth in peak periods when delays and congestion are most severe. In the busiest peak hour, 51 per cent of LaGuardia Airport's total traffic comprises general aviation movements, 52 per cent at Newark and 30 per cent at Kennedy International.

A major component of the general aviation movements during peak hours is by air taxis. In the busiest peak hour they constitute 70 per cent of general aviation movements at Kennedy, 48 per cent at Newark Airport and

36 per cent at LaGuardia. In total, air taxi movements during that peak hour constitute about one of every four plane movements.

Many of these air taxi and other general aviation movements are conducted in small aircraft which carry only one to four passengers, yet congest airspace and runway capacity as much or more than movements of larger aircraft carrying 100 or more passengers. In addition, they delay the aircraft carrying the larger number of passengers.

Although the separation of general aviation and airline traffic during peak operating hours will provide some relief, it will not forestall the pressing need for a fourth major airport to serve the area. Mr. Tobin noted that the Port Authority's report "Airport Requirements and Sites to Serve the New Jersey-New York Metropolitan Region 1966" stated:

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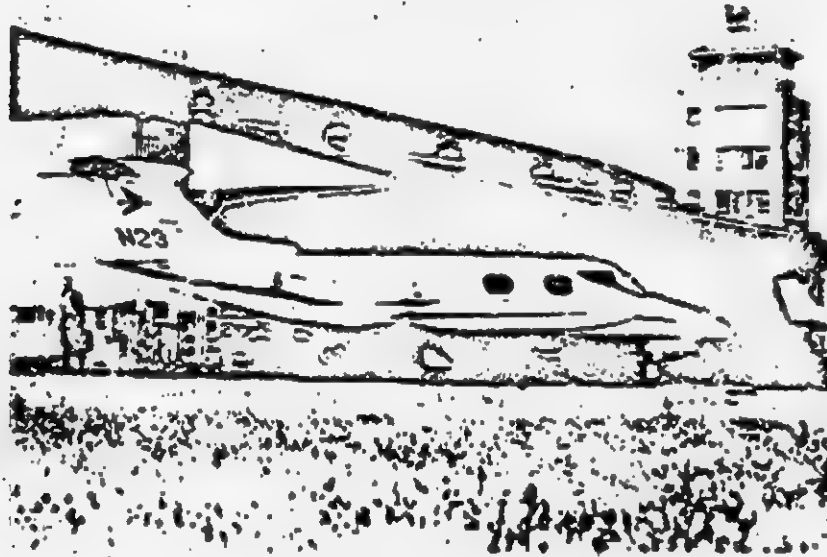
"To provide all possible capacity pending the availability of such an airport, the Port Authority has been working continuously to expand the existing airports to their maximum practical capacity, and has expended hundreds of millions of dollars to that end. The Port Authority will continue these efforts. It will continue to study and restudy every conceivable plan which can be devised and will implement without delay any such plans which are operationally and economically feasible and practicable. Only through such action and through the completion of a new airport can the region maintain its leadership in air transportation."

end

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Exhibit BA-102
Page 1 of 4

Port of New York Authority Brochure Designed to Persuade
General Aviation to Use Teterboro Airport.



October, 1967

To General Aviation:

Teterboro is The Airport for general aviation operators flying to New York City. It is now the quickest airport to Manhattan, as the attached brochure describes.

We hope you find this material and information helpful. Circulate it among your aviation friends, or better yet, post it on the bulletin board at Operations if you have the opportunity.

In any event, be sure to take advantage of the new Teterboro Airport the next time you come to town. We think you will be pleasantly surprised.

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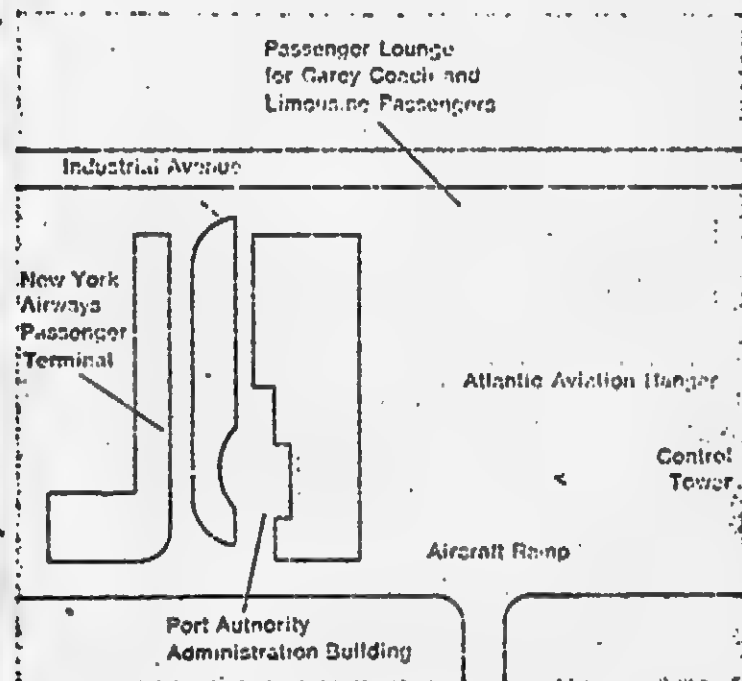
PORT OF NEW YORK AUTHORITY HAS ENCOURAGED
THE GENERAL AVIATION USERS TO USE TETERBORO

Port of New York Authority Brochure Designed to Persuade
General Aviation to Use Teterboro Airport.

Future Plans for Teterboro. Teterboro's two runways, 6-24 and 1-19, are being lengthened to 6,000 and 7,000 feet respectively. This extension project should be completed by the Port Authority in 1968 as a major improvement to the airport. Improved taxiways also are to be constructed at Teterboro and a new type taxiway centerline lighting system will be used for the first time at a general aviation airport.

Under an agreement with the Port Authority, Pan American World Airways will undertake further development and operation of Teterboro as a general aviation airport. Pan Am plans additional services and facilities as the airport continues to provide the utmost in convenience for the New York-bound general aviation operator.

Teterboro Airport Ground Facilities



ARRIVING
TETERBORO
NEXT STOP
MANHATTAN

Why Not Make
Teterboro
Your First Stop
in the
New York Area?

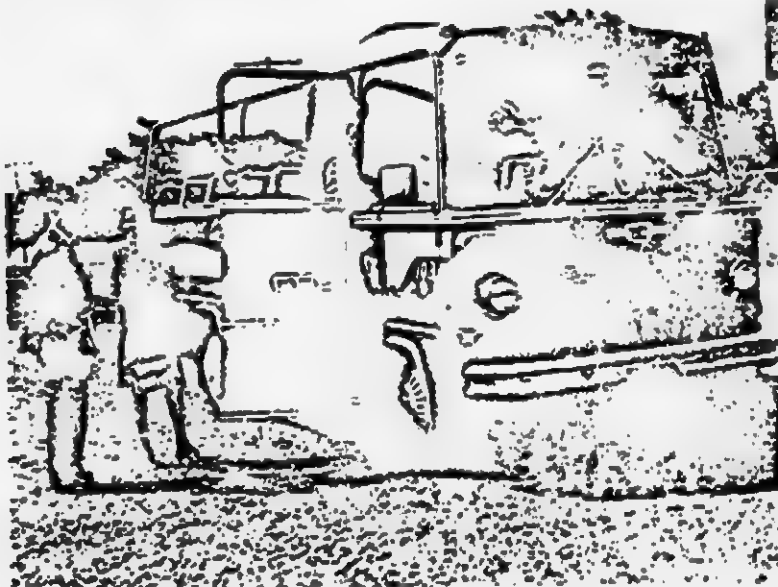
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Teterboro— General Aviation's Quickest Airport to Manhattan

Teterboro is the quickest airport to New York City for the general aviation operator. A variety of transportation services—new airport coach, limousine, helicopter—link Teterboro quickly and directly to Manhattan. General aviation operators using Teterboro can take advantage of the convenience of these transportation services, and eliminate time-consuming air traffic delays at other airports.



Airport Coach. Teterboro Airport, conveniently located in northeast New Jersey, is only 20 minutes from Manhattan via airport coach. The new coach service connects Teterboro and the West Side Air Lines Terminal at 42nd Street and 10th Avenue in New York City. It is operated by Carey Transportation for the Port Authority and airlines to provide general aviation passengers with fast, reliable transportation to the City.



From TETERBORO—Every Half Hour, 7:30 A.M. to 7:00 P.M.
From MANHATTAN—Every Half Hour, 7:00 A.M. to 6:30 P.M. Hourly
Service on Weekends and Holidays.

Carey provides daily service in modern, air conditioned, 18-passenger buses. On weekdays coaches leave every half hour from Carey's Passenger Lounge in the Atlantic Aviation Hangar at Teterboro (see map) and from the West Side Air Lines Terminal in New York. Hourly service is provided on weekends and holidays. The one-way fare is \$1.50.

Helicopter. New York Airways, the helicopter airline, provides daily round-trip service to the Midtown Helicopter atop the Pan Am Building in Manhattan. The fare is \$6.00 and flight time is 7 to 10 minutes. Direct service is provided to Kennedy International and connecting flights can be made to LaGuardia Airport. Fares and flight schedules can be obtained from the New York Airways passenger terminal at Teterboro (see map). Phone (212) 458-7400 in New York or (201) 288-9112 in New Jersey for information and reservations.

Daily helicopter service to the Pan Am Building in midtown Manhattan is provided by New York Airways.

Airport Limousine Service. Chauffeured limousines operated by Teterboro Airport Ground Transportation, Inc. are available 24 hours a day to any destination. Advance reservations are suggested. Phone (201) 288-1950. Scheduled limousine service to LaGuardia and Kennedy Airports is provided by New Jersey and New York Limousine Service, Inc. Reservations can be made on one hour's advance notice. Phone (201) 489-0222.

The limousine waiting area is in the same Passenger Lounge as for the Carey coach.

Car Rental's. Direct-line telephones to Avis and Hertz car-rental companies are located in the Passenger Lounge of the Atlantic Aviation Hangar. Cars are de-

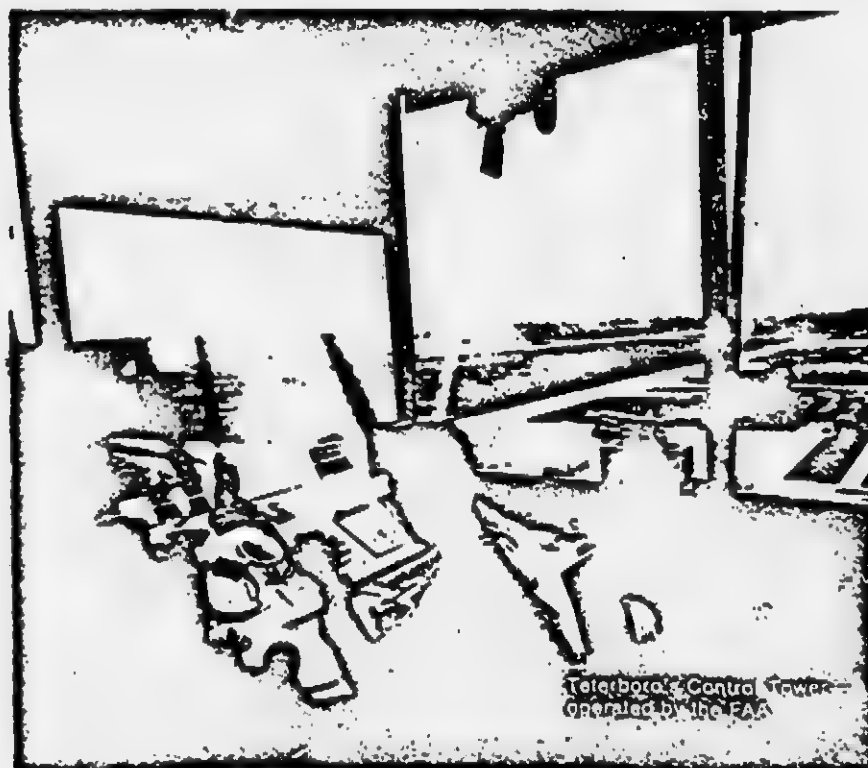
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livered to patrons at the airport and standard rental rates apply.

Taxicabs from neighboring towns are available on call. Please consult the Bergen County telephone directory at Teterboro.

Public bus service is provided by the Manhattan Transit Corporation Inc. between the airport and the Port Authority Bus Terminal in mid-Manhattan at 42nd Street and 8th Avenue. The bus stops at the corner of Industrial Avenue and Route 46 (the Esso Auto Service Station) located at the northwest corner of the airport. Buses stop here every half hour, with express service every fifteen minutes during peak periods. The fare is 60 cents.

- Teterboro—an airport just for general aviation
- No time-consuming airport delays due to carrier traffic
- IFR Capability with low approach minimums
- Full Instrument Landing System
- High Intensity Approach Light System with sequenced flashers
- FAA Control Tower
- Two 5,000-foot runways
- Flight Service Station
- Weather information
- Service and Maintenance facilities to serve the complete range of general aviation aircraft
- Low take-off fees



1444Exhibit BA-103
Page 1 of 3THE NEW YORK PORT AUTHORITY IS FORECASTING A GREATER
SQUEEZE OF GENERAL AVIATION AT THE THREE MAJOR AIRPORTS

The Port of New York Authority has forecast that demand for "Peak Hour IFR Movements" will exceed the capacity of four PNYA airports by 28 movements per hour in 1970 and 62 movements per hour in 1975:^{1/}

Forecast of IFR Peak Hour General
Aviation Aircraft Movement Demand by Airport

	<u>Kennedy</u>	<u>La Guardia</u>	<u>Newark</u>	<u>Teterboro</u>	<u>Total</u>
1970	16	32	14	7	69
1975	27	46	21	12	106
1980	37	61	30	17	145

Summary

The demand forecasts for each component of air traffic were combined to produce the total estimated demand in the future during an average peak hour as shown below.

Forecast of IFR Peak Hour Total Aircraft
Movement Demand at Port Authority Airports

(Including Teterboro)

	<u>Passenger Aircraft Movements</u>	<u>All-Cargo Aircraft Movements</u>	<u>General Aviation Aircraft Movements</u>	<u>Total Aircraft Movements</u>
1970	141	3	69	213
1975	137	4	106	247
1980	152	5	145	302

^{1/} Information in this Exhibit has been taken from the Port of New York Authority Study - "Airport Requirements and Sites to Serve the New Jersey-New York Metropolitan Region" (1966)- Previously cited.

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The Port Authority retained Airborne Instruments Laboratory in February 1965 to investigate the capacity potential of possible additional runways at Kennedy International, LaGuardia and Newark airports and to determine the capacity potential of MacArthur, Morristown and Westchester County airports on the periphery of

the New York metroplex airspace. Earlier studies, in particular the 1964 Aviation Development Council study, had raised serious question as to the capacity limits of the New York metroplex airspace. Accordingly, the 1966 AIL study assessed the ability of the airspace to accommodate a simultaneous operation at the three major airports, the three peripheral airports and Teterboro Airport, all operating at capacity, as well as the individual capacities of the four Port Authority airports. The results of the 1966 study are summarized in the table below.

1966 Estimates of Airport Capacity
(Peak Hour IFR Movements)

	<u>Kennedy</u>	<u>LaGuardia</u>	<u>Newark</u>	<u>Teterboro</u>	<u>Total</u>
1970 to 1980	74	50	49	12	185

The 1966 AIL study confirms the previous estimate of Newark capacity at 49 peak hour IFR movements; estimates LaGuardia capacity to be 50 peak hour IFR movements, and estimates Kennedy capacity to be 74 peak hour IFR movements. The increase in estimated capacity at LaGuardia of one movement more than the 1964 estimate of 49 is due to the recently programmed Instrument Landing System (ILS) on Runway 13. The increased capacity forecast at Kennedy is due largely to more accurate weather and runway -use data upon which calculations are based.

The airspace analysis indicated that with planned improvements in technique and equipment, the New York metroplex air traffic control system could accommodate a simultaneous capacity operation at the three major airports with their present runway configuration without limitation caused by the expected traffic at the peripheral airports.

The 1966 AIL study confirms previous findings that operations today at Teterboro Airport during instrument weather seriously affect capacity at Newark Airport. Such IFR operations at

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Teterboro Airport also adversely affect LaGuardia capacity when instrument operations are conducted on the latter's Runway 13. It was found, however, that Teterboro could have a potential practical capacity of 10 to 12 IFR peak hour movements if low altitude radar coverage, instrumentation of Runway 24, and additional VOR installations are provided, and if adequate provisions are made in the FAA's planned Common IFR Room.

It was also found that an additional runway at LaGuardia would not increase that airport's peak hour capacity. A general aviation runway on the west side of Newark Airport would add only one movement to that airport's peak hour IFR capacity.

The addition of two major runways in Jamaica Bay and the extension of Runway 4L-22R, which would result in a triple parallel runway system, could theoretically add 35 peak hour IFR movements to Kennedy's capacity. The construction of these runways on land fill, the only practical method, could, however, disrupt the tidal currents and flows of Jamaica Bay and require extensive and costly revisions to the navigational channels in the Bay. Relocation and reconstruction of portions of the Rockaway subway line might also be required. For these reasons, additional runways in Jamaica Bay are considered enormously expensive and impractical.

The findings of the preceding two chapters on air traffic demand and airport capacity provide the following comparison of the forecast air traffic to the capacity of Kennedy, LaGuardia, Newark and Teterboro airports in terms of peak hour aircraft movements when Instrument Flight Rules (IFR) are in effect.

Number of Aircraft Movements
(Peak Hour IFR Movements)

	<u>Forecast Demand</u>	<u>Estimated Capacity</u>	<u>Excess Demand</u>
1970	213	185	28
1975	247	185	62
1980	302	185	117

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THE AIRLINE POLICY ON GENERAL AVIATION

The airline policy was contained in a news release of the Air Transport Association, issued December 21, 1967. Mr. J.T. Trippe, Chairman and Chief Executive Officer of Pan American World Airways is a member of the Board of Directors of the Air Transport Association.

FOR IMMEDIATE RELEASE

AIRLINES PROPOSE GENERAL AVIATION AIRPORTS
TO RELIEVE CONGESTION

WASHINGTON, D. C., Dec. 21 -- "Encouraging the creation and development of new general aviation airports suitably located in metropolitan areas," was the key point in a five-point airline policy on general aviation released today by the Air Transport Association of America (ATA).

Stuart G. Tipton, president of ATA, the service organization that represents the majority of the scheduled certificated airlines of the United States, said, "The policy was adopted by the ATA's Board of Directors and represents their strong feeling that the development of new general aviation facilities, including general aviation airports, is the best and most practical long-term solution to relieving the mounting congestion at major metropolitan airports."

The other four points:

--- Encourage the Federal Aviation Administration to establish federal regulations requiring all aircraft operating within the terminal air space of major airports to meet uniform standards for traffic control, airborne equipment and pilot proficiency.

--- Encourage operators of high volume air carrier airports to establish proportional airport landing fees and charges.

--- Encourage and assist the FAA to develop adequate air traffic control procedures for V/STOL (vertical take-off) aircraft.

Encourage the FAA and Civil Aviation Board to study the increasing volume of air taxi type operations at air carrier hub airports.

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AIRLINE POLICY ON GENERAL AVIATION

- A. Encourage the creation and development of general aviation airports, suitably located in metropolitan areas, which will attract a maximum volume of general aviation activity away from air carrier airports to achieve more efficient utilization of air space and airport capacity. To attract and serve various segments of general aviation, such reliever airports must be suitably located and should have:

1. Convenient Ground transportation to business areas;
2. Convenient transportation to air carrier airports;
3. Adequate navigational and landing aids, etc.;
4. Adequate aircraft servicing facilities;
5. Adequate passenger and crew facilities and services.

Airport use charges such as landing fees should provide sufficient differential between general aviation airports and airline airports to encourage general aviation to use those airports specifically provided for their use.

States and municipalities should encourage the full development and utilization of privately-owned general aviation airports.

- B. Encourage the Federal Aviation Administration to establish federal regulations which will require that all aircraft operating within the terminal air space at major airports meet uniform standards for traffic control, airborne equipment and pilot proficiency. This objective is necessary to achieve optimum safety and compatibility with the air traffic system and efficient utilization of all airport facilities created as an integral part of the national air transportation network.
- C. Encourage operators of high volume air carrier airports to establish airport landing fees and charges that give due consideration to proportional occupancy of airfield facilities and approaches, that promote conservation of investment in airport facilities, and that encourage full utilization of reliever airports.

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- D. Encourage and assist the Federal Aviation Administration to develop adequate air traffic control procedures for V/STOL aircraft which will permit maximum advantage to be taken of the unique characteristics of V/STOL without interfering with operations of conventional aircraft. The greatly expanded use of V/STOL holds promise of providing relief and alternative solutions for the growing problem of public ground access to airports.
- E. Encourage the Federal Aviation Administration and the Civil Aeronautics Board to study the increasing volume of air taxi type operations at air carrier hub airports. Such operations should complement air carrier services at major airports without interfering with airline service.
- F. The scheduled airline industry pledges its full support and cooperation in efforts to accomplish the foregoing recommendations at the earliest possible date.

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**THE CLOSING OF SECONDARY GENERAL AVIATION
AIRPORTS IS ADDING TO THE SQUEEZE ON
GENERAL AVIATION AIRCRAFT IN THE NEW YORK AREA**

The general aviation aircraft operating in the New York area are being squeezed "from the top" by the continual, increasing operations of the air carriers. They are also being squeezed "from the bottom" as secondary general aviation airports are closed, thereby restricting their opportunities to operate within the New York area.

The following report from the "New York Times" of March 19, 1967, supports this conclusion. The closing of secondary general aviation airports will divert smaller types of general aviation aircraft to the operating airports and, as well as intensifying the total problem, will react directly against the high performance general aviation aircraft which are currently limited to certain airports.

In the period 1946-1963 only four public-use airports were established within 30 miles of Times Square. During the same

period 19 public-use airports were abandoned within the same radius.^{1/}

^{1/} Tri-State Transportation Committee - General Aviation, July, 1965.

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THE CLOSING OF SECONDARY GENERAL AVIATION AIRPORTS IS ADDING TO THE SQUEEZE ON GENERAL AVIATION AIRCRAFT IN THE NEW YORK AREA

PRIVATE FLYING: AIRPORT SQUEEZE

Acquisition of Fields for
Other Uses Brings Crisis
in Many City Areas

By RICHARD HAITCH

Across the Hudson in expanding Middlesex County, N.J., an airport that opened a year before Charles A. Lindbergh flew the Atlantic is waiting to die.

After 41 years of service to general aviation, Hadley Airport's lease expires June 31, and part of the site has already been committed for industrial development.

A year ago Middlesex had three airports — Hadley at South Plainfield; North Brunswick, and Applegarth in Monroe. By July only one will be left: Applegarth, which is considered barely marginal. North Brunswick has been sold for housing.

South Plainfield had a chance to buy Hadley a few years ago, with \$385,000 in Federal aid, envisioned. The offer was rejected. The borough wanted industrial ratables, and its plan to develop only part of the airport was considered too restricted for county aid.

Prospects Called 'Hazy'

Middlesex County's planning director, Douglas Powell, says gloomily today: "One must conclude that general aviation prospects now are very hazy. In view of Hadley Airport's future, and in view of the fact that there is no active plan that would be a replacement for Hadley."

Middlesex's plight is the plight of general aviation in metropolitan New York: growing traffic, but few and fewer airports from which to operate.

For those who think that airport facilities here are unmatched in the nation, the Federal Aviation Agency offers these facts:

¶ In 1945 there were 4,026 civil airports in the United States. Today there are 9,673.

¶ In 1945 there were 91 such airports in the tristate Greater New York region. Today there are 70.

Civil Activity Climbs

While airport development here has been in a power dive, civil-aviation activity has been climbing to new altitudes nearly every year. The F.A.A. sketches this picture of national growth in the past decade alone:

¶ At the end of 1955 there were 298,076 active pilots and 69,422 eligible aircraft.

¶ As of Dec. 31, 1965 — the latest complete tabulation — there were 479,770 pilots and 171,741 aircraft.

¶ In the same period, estimated hours flown by general aviation (not counting the airlines) rose from 9.5 million to 16.7 million.

Good airports are badly needed, but political and economic factors suggest to many observers that only a strong, centralized approach such as that recommended last Thursday by the Metropolitan Commuter Transportation Authority, has a chance for success.

The authority proposed to Governor Rockefeller that the state acquire, as a start, Republic Airport in Suffolk County, L.I., and two new general-aviation sites — one in northwest Westchester, another in Center Rockland County.

Factors Checking Growth

These factors have prevented airport expansion:

¶ High real-estate values that induce private airport owners to sell to commercial building and housing developers.

¶ The resolute resistance of noise-sensitive homeowners.

¶ A lack of expert knowledge of aviation among many political officials.

Here are some examples from the records:

In 1964 the Staten Island Airport, a privately owned field, was open to general aviation and available for further development. Today it is a shopping center. The city could have acquired the airport through its power of eminent domain; there is nothing in the record to indicate that it tried.

Recently, the city administration "discovered" the need for a general-aviation field on Staten Island. It is planning now to build a new airport in the Fresh Kills swamp, close by the former one.

After costly engineering surveys, legislative action, petitions to the Federal Government for aid that has been cut back by Congress, and a total estimated outlay of at least \$2.5 million, Staten Island will once again have an airport, it is hoped by 1969.

City Called 'Remiss'

Herbert B. Halberg, the city's Commissioner of Marine and Aviation, said: "I think the city has been very remiss in aviation prior to the Lindsay administration."

In the summer of 1961 Mitchell Air Force Base was abandoned by the military in Nassau County, L.I. The F.A.A., businessmen and local Chambers of Commerce, among others, pleaded for its conversion to an airport for general aviation. They noted that the field was close to growing industry, highways and New York City.

Nassau resisted and acquired the site.

No Action Planned

Today two of Mitchell's runways are still intact. The Nassau Community College and part of Hofstra University occupy part of the old airfield site; the rest is scheduled for development, largely as a cultural center.

But many contend that Nassau needs a general-aviation airport, because, as the Tri-State Transportation Committee noted in a 1965 study: "There is no public-use airport in Nassau County."

But Nassau County Executive Eugene H. Nickerson reports that the county plans no action.

"We had a study made a few years ago by the Planning Commission, and they made several recommendations for an airport," he recalled. "But the recommendations weren't acceptable to the Board of Supervisors. Each Supervisor said it was fine, but not in his town."

In neighboring Suffolk County in 1964, the Republic Aviation Corporation, its military business curtailed, made final plans to abandon its well-developed airport at Babylon. For a time, Town Supervisor

Gilbert C. Hanse expressed a strong interest in public operation of the field for general aviation. But homeowners objected.

Permissive Attrition

When Suffolk County began negotiations to acquire Republic Airport, "Hanse shook his head and said no," according to County Executive H. Lee Dennison. Home rule prevails in the county.

Today the airport is being operated under private lease as a general-aviation airport. But Babylon is suing in State Supreme Court to close the field "on the grounds that it

never was a general-aviation airport and is detrimental to the health, safety and well-being of the community," as Mr. Hanse put it. The case is awaiting court action.

Babylon would like some day to see an industrial park built on the site, Mr. Hanse indicated.

Would it consider an industrial air park — that is, one with airport facilities immediately adjacent to industry?

"The answer is no," Mr. Hanse says.

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Page 1 of 1

EXCERPT FROM A SPEECH BY GEORGE A. SPATER, OF AMERICAN AIRLINES, INC., BEFORE THE AMERICAN INSTITUTE OF AERONAUTICS AND ASTRONAUTICS, ANAHEIM, CAL. ON OCTOBER 24, 1967

"...the question is not whether anyone should be displaced because this is inevitable as we reach saturation; the question is whether those displaced should be a large segment of the public or a small segment of the public...Under today's rules, there is nothing to prevent general aviation from successfully pre-empting New York's three existing airports and then going on to pre-empt its fourth and fifth airports as they are developed, so that anyone who wants to get on a public plane in New York will have to go 100 miles from the city to board one.

This is a condition which must be remedied if public air transportation is to survive."

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Page 1 of 3

THE PORT OF NEW YORK AUTHORITY
NOTICE TO GENERAL AVIATION OPERATORS

NOTICE TO ALL GENERAL AVIATION OPERATORS:

September 19, 1967

The Port of New York Authority in cooperation with major airlines serving the metropolitan area will institute on Monday, September 25 an experimental shuttle bus service between Teterboro Airport and New York City, providing greater convenience to general aviation operators using the airport and making Teterboro general aviation's quickest route to midtown Manhattan.

On that date Carey Transportation will start operating non-stop coaches between Teterboro and the Westside Airlines Terminal in New York, reducing ground travel time between the airport and Manhattan to 20 minutes. At present the scheduled running time of Carey buses from Newark Airport to Manhattan is 24 minutes and 25 minutes from LaGuardia.

This coach service will be provided in air-conditioned 18-passenger buses operating on weekdays every half hour from Carey's Passenger Lounge in the Atlantic Aviation Hangar at Teterboro between 7:30 A.M. and 7:00 P.M., and from the Westside Airlines Terminal at Tenth Avenue and Forty-second Street between 7:00 A.M. and 6:30 P.M. Hourly service will be provided on weekends and holidays. The one-way fare will be \$1.50 per passenger. Any deficits not made up by revenues from the passenger service will be paid by the airlines.

The new Carey operation will augment existing transportation facilities available at Teterboro. New York Airways will continue to provide round-trip service to the mid-town heliport atop the Pan Am Building as well as to Kennedy International Airport. Chauffeured limousines operated by Teterboro Ground Transportation, Inc. are available around the clock and taxicabs from neighboring towns are available on call. Scheduled limousine service to Bergen County communities and to LaGuardia and Kennedy Airports is provided by New Jersey and New York Limousine Service, Inc. The Avis and Hertz car-rental companies also serve Teterboro Airport.

The airport's numerous advantages to general aviation will continue to increase under the terms of a 30-year agreement that the Port Authority has with Pan American World Airways, whereby Pan Am will undertake further development and operation of Teterboro. In particular,

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landing at Teterboro will eliminate time-consuming air traffic delays at the air carrier airports, not to mention the congested ramp areas at the larger air terminals. In addition, the airport and its tenants are prepared and pleased to serve all types of general aviation aircraft, single and multi-engine, piston and jet. Finally, Teterboro offers general aviation the lowest take-off fees of any Port Authority airport. We believe that all these factors make Teterboro the most attractive airport for general aviation aircraft coming to the New York area.

The improvement in ground transportation made possible by the financial support of the airlines serving the New York area, and the development of additional general aviation facilities at the airport under the Pan Am agreement are elements of a cooperative program being developed by the airlines and the bi-state agency. This long range program is designed to relieve air traffic congestion at Kennedy International, LaGuardia and Newark Airports, especially during peak periods, by encouraging general aviation to use other airports.

For your general information, I have attached an airport fact sheet and facility location map. Our staff is now preparing a brochure detailing all services available to general aviation at Teterboro which we

shall forward to you as soon as it is completed.

We think it will be worth your while to take advantage of these new services and make Teterboro your first stop in the New York area.

Sincerely,

John R. Wiley
John R. Wiley

Encls.

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Exhibit BA-201
Page 1 of 2

**MULTI-ENGINE GENERAL AVIATION AIRCRAFT ARE CONCENTRATED
AT THE "ALL WEATHER" AIRPORTS OF THE AREA**

Two thirds of the multi-engine aircraft are based at the
"All Weather" airports:

<u>"All Weather" Airports in PNYA Area</u>	<u>Number of Based Aircraft 1/ Single-Engine Multi-Engine</u>		<u>Percent of Multi-Engine</u>
Newark	1	15	
Teterboro	214	90	
La Guardia	34	32	
John F. Kennedy	<u>0</u>	<u>4</u>	
	249	141	67%
 <u>Other Airports in PNYA Area</u>			
Caldwell-Wright	140	20	
Hanover	84	1	
Linden	91	24	
Totowa Wayne	80	8	
Hadley	60	2	
Flushing	<u>96</u>	<u>14</u>	
	551	69	33%
Totals	800	210	100%

The multi-engine totals include both light and heavy multi-engine general aviation aircraft because these categories are not separated on the FAA's Form 29A.

1/ FAA form 29A, 3rd Quarter, 1967.

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MULTI-ENGINE GENERAL AVIATION AIRCRAFT ARE CONCENTRATED
AT THE "ALL WEATHER" AIRPORTS OF THE AREA

Findings of "General Aviation Airport Users in the Tri-State Region:"

Re Business Flights:^{1/}

"Most business flights are relatively short and only 19% originated further than 300 miles from the surveyed airport. Local or Tri-State originating business flights account for one-third of business flights at the "all weather" airports. At the lesser equipped airports the incidence of short distance flights increased reaching almost one-half at "very well equipped" airports and three-quarters of flights landing at the "basic" and "minimum" airports."

Re Multi-Engine Aircraft:^{2/}

"Multi-engine aircraft are most typically owned by business firms. It is apparent that business travel is heavily oriented toward the core area, particularly Manhattan. This is substantiated by looking at the distribution of multi-engine aircraft at each "all weather" airport. The most distant airport from New York City, MacArthur, had only 14% multi-engine aircraft; Westchester County, 30 miles from New York City, had one-third multi-engine aircraft; the Big Three airports, closest to the core area, had almost two-thirds multi-engine aircraft."

Re IFR Equipped Aircraft:^{3/}

"On a region-wide basis almost two-thirds of the flights made by general aviation aircraft are IFR equipped. Aircraft using "all weather" airports are more likely to be IFR equipped. The number of IFR equipped aircraft decreases with each less-equipped airport group."

"Since 60% of the Region's general aviation aircraft and 85% of aircraft flown for business purposes are equipped for IFR flying, increased demands upon both the air traffic system and present ILS capacity are expected. The acceptance rate of airports presently equipped with ILS cannot, at times, meet the de-

mand requirements during poor weather conditions. It would be impossible to accommodate additional demand without undue delays, and it is apparent that additional ILS capability will be regional at other airports in the Region."

- 1/ Tri-State Transportation Committee, September 1965, p. 15.
- 2/ Ibid, p. 24.
- 3/ Ibid, p. 25.

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Exhibit BA-251

Page 1 of 1

ANNOUNCEMENT OF GOVERNOR ROCKEFELLER CONCERNING REPUBLIC (FARMINGDALE) AIRPORT

The following announcement appeared in the New York Times of January 10, 1968:

Governor to Seek \$10.8-Million For Private Plane Center in L.I.

Continued From Page 1, Col. 4

made in his over-all budget message to the Legislature next Tuesday. The funds will come, if the Legislature approves, from the \$2.5-billion transportation bond issue approved by the voters in November.

Requests for \$10.3-million in Federal aid for the project already have been filed. The final increment of \$3,625,000 would be provided by the Metropolitan Commuter Transportation Authority, which now runs the Long Island Rail Road and on March 1 will take over policy and planning control of most transportation projects in the metropolitan area.

The Republic field is at the edge of an aircraft plant that turned out such fighter planes as the P-47 of World War II and the much more recent F-105 jet. The Republic Company that developed them is now a subsidiary of the Fairchild-Hiller Corporation.

The field handles private planes and some military aircraft. But lack of an instrument



The New York Times Jan. 10, 1968
Proposed transportation center is marked by cross.

landing system and other electronic aids limits operations to periods of relatively good weather.

Two Main Purposes

Dr. William J. Ronan, head of the M.C.T.A. and Governor Rockefeller's chief transporta-

tion adviser, said in an interview here that the Republic Airport project had two main purposes.

The first, he said, is to serve the diverse transportation needs of residents of Nassau and Suffolk Counties. He said the improved aviation facilities, in particular, would help attract industry to what he termed a "great growth area."

The second purpose, Dr. Ronan said, is to help ease the air and ground congestion at the three major commercial airports of the metropolitan area — Kennedy International, La Guardia and Newark.

In this respect the plan dovetails with several other developments that have been announced recently or are under intensive negotiation.

One was the agreement of Pan American World Airways in September to develop and operate Teterboro Airport in New Jersey. Pan Am also made a short-term agreement to operate Republic, but no final decision has been made on who would take over long term operation of the improved facility.

Another was preliminary agreement between the city and Pan Am last week on establishing a heliport for small he-

icopters at 61st Street and the East River.

Finally, state and city officials are negotiating with Pan Am to start developing the world's first stolport extending out over the Hudson River between 59th and 68th Streets.

The term STOL stands for "short take-off and landing." STOL planes are generally conventional-looking, fixed-wing planes that are able, primarily through use of extra large wings and flaps plus other high-lift devices, to land or take off from runways a fraction the size required by regular airliners.

The guiding philosophy in these related programs is that major jetport congestion can be relieved if corporation and other private planes can be attracted to special general aviation airports, such as Republic and Teterboro. They have been discouraged from using the smaller airports in the past because the facilities have been inferior to those at the jetports and, perhaps more important, because access to Manhattan or to the jetports has been slow and difficult.

It is hoped that the improved operations at Republic can be opened in about two or three years.

weather airport for corporation and other private planes.

Providing high-speed express service on the Long Island Rail Road to cut the running time between Manhattan and Republic from 57 to 30 minutes.

Buying Zahn's Airport, just to the south, and closing down flight operations there to avoid interference with the upgraded operations at Republic.

Putting in large bus and taxi terminals and extensive parking areas for automobiles.

The Governor's announcement said the combined transportation center, about 40 miles from Manhattan, would be "one of the first of its kind in the nation."

His recommendation will be Continued on Page 49, Column 1

GOVERNOR TO SEEK AIR CENTER ON L.I.

Asks a \$10.8-Million Grant
for General-Aviation Site

With L.I.R.R. Service
Special to The New York Times

ALBANY, Jan. 9—Governor Rockefeller announced today that he would recommend a \$10,875,000 grant to help develop a \$25-million transportation center at the Republic Aviation Airport at Farmingdale, L. I.

The over-all plan calls for the following measures:

Buying the Republic field and turning it into an all-

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Exhibit BA-302

Page 1 of 3

EXCERPTS FROM NEW YORK AIRWAYS CERTIFICATE
RENEWAL CASE DOCKET 15661

Excerpt from Motion of Trans World Airlines, Inc., dated December 30, 1965:

"By letter dated December 22, 1965, New York Airways moved that the Examiner take official notice of four additional agreements between New York Airways, Inc. (NYA) and Pan American World Airways, Inc. (Pan Am), and that there be included in the record of this case a certain Heliport Agreement dated as of December 1, 1965, between Grand Central Building, Inc. (GCB) and Pan Am.

"Trans World Airlines, Inc. (TWA) concurs in the motion that all five of the above-mentioned agreements be made a part of the record in this case, and further moves that in consequence of the provisions of the additional agreements and in view of the entire record as thus supplemented, the Examiner and the Board condition any approval of agreements between Pan Am and NYA involved in this proceeding so that:

"4. NYA will not be prevented, impeded or deterred from conducting a reasonable volume of independent operations to and from the heliport on the Pan Am Building, not designed primarily for the benefit of Pan American and Pan American passengers.

"9. Section 3.2(c) of the Heliport Agreement and paragraph 7 of Agreement CAB No. 18656 provide means by which Pan Am can exclude any other operator from use of the Heliport and thus preserve its monopoly and control of the operations of the Heliport."

Excerpt from Page 5 of Pan American's Answer to TWA's Motion

"(c) Proposed Condition (4), relating to the use of the Heliport, can hardly be seriously entertained. Pan Am provided the Heliport at great expense and is clearly entitled to something to say as to its use. Certainly Pan Am ought not be deprived from using the Heliport to the extent it wishes for services Pan Am is underwriting. If TWA or any other carrier should consider that it would like similar arrangements, it is free to make its own investment and its own arrangements with NYA. Nothing in the agreements restricts this in any way."

Excerpts from Order E-23714, May 20, 1966:

"2. In his opinion the Examiner also found that financial and operating and leasing agreements dated May 27, 1965, and June 17, 1964 (CAB Agreements Nos. 17221-A13 and 18376) between Pan American and TWA, on the one hand, and NYA should be approved under sections 408(b) and 412(b) of the Act, subject to conditions.

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Pan American contends that these conditions are far too broad in scope and too vague to enable the parties to determine how they would apply.

"With respect to condition (c)^{1/} Pan American states that it is entitled to make full use of the heliport on the roof of the Pan Am building, in which it has made a substantial investment, and that it should not be called upon to forego such use for the benefit of others who have made no such investment. The Board does not consider that Pan American is entitled to exercise its proprietary rights to secure a monopoly over use of the heliport and does not intend to permit this result. Pan American may legitimately receive a return on its investment by appropriate charges for use of the facility. But it should not be permitted to place limitations on NYA's operations at the heliport in order to prefer its own traffic.

"^{1/} 'Pan American and TWA are prohibited from restricting or restraining in any manner NYA's operations from the Pan American Building heliport or any other heliport in the metropolitan New York City area.'"

"Accordingly, It Is Ordered:

"4. That CAB Agreements Nos. 17221-A13 and 18376 between Pan American World Airways and Trans World Airlines, on the one hand, and New York Airways, on the other, be and are hereby approved under section 412(b) of the Act and that the acquisition of control of New York Airways by Pan American World Airways and Trans World Airlines be and it hereby is approved under section 408(b) of the Act, subject to the following terms and conditions:

"(a) Pan American and TWA are prohibited from interfering with NYA's right to negotiate financial, opera-

ting or aircraft leasing agreements with other direct air carriers;

"(b) Pan American and TWA are prohibited from restricting the use of any aircraft now leased or which may be leased to NYA;

"(c) Pan American and TWA are prohibited from restricting or restraining in any manner whatsoever NYA's operations from the Pan American Building Heliport or any other heliport in the metropolitan New York City area;..."

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Note: So far as we have been able to determine, from the date of the Board's order of approval to the present time, the only operations conducted by New York Airways between the roof of the Pan Am Building and an air carrier airport have been those supported by Pan American to Pan American's satellite at Kennedy Airport. The only operations conducted by New York Airways between the Teterboro Airport and the Kennedy Airport also are those supported by Pan American to Pan American's satellite at Kennedy.

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Exhibit BA-303

Page 1 of 1

PAN AMERICAN OWNS 28.4% OF THE OUTSTANDING STOCK IN NEW YORK AIRWAYS

Total shares outstanding	410,382
Shares held by Pan American	116,589
Percentage of total shares held by Pan American	28.4%

Notes:

1. At the present time Pan American's stock is held in a voting trust as the result of a requirement imposed by a Civil Aeronautics Board order.
2. Pan American holds a New York Airways note for \$262,270 which is now due and payable upon demand (as of June 30, 1967).
3. Pan American has leased to New York Airways three V-107 helicopters and related spare parts.

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Exhibit BA-304
Page 1 of 1

PAN AMERICAN IS AN IMPORTANT FACTOR IN
THE SALE OF HIGH PERFORMANCE AIRCRAFT

The following extract is taken from Pan American's 1966
Annual Report:

"Business Jets

Pan Am's Business Jets Division, established three years ago and referred to in previous annual reports, made further progress throughout the year. Your Company has increased its order to 160 Fan Jet Falcons, with options for 40 more. Of these, 62 have been sold in the U.S. and Canada--principally to corporations engaged in foreign trade.

Already Fan Jet Falcons have seen service overseas on Pan Am's airways. Pan Am stations throughout the world are prepared to service Fan Jet Falcons at reasonable cost--providing flight planning, fueling, customs clearance, traffic handling, dispatch, flight watch, food service, walk-around inspection, spare parts assistance and help with language problems."

In the first ten months of 1967, 44 Fan Jet Falcons were shipped by the manufacturer, Avions Marcel Dassault.

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Exhibit BA-311
Page 1 of 13

PAN AMERICAN PRESS RELEASES REGARDING
TETERBORO AND REPUBLIC (FARMINGDALE) AIRPORTS

FOR RELEASE TUESDAY 1PM SEPTEMBER 19, 1967

PAN AM TO MANAGE TETERBORO, REPUBLIC AVIATION AIRPORTS

FOR PRIVATE AND BUSINESS AIRCRAFT

A final agreement between Pan American World Airways and the Port of New York Authority for operation and further development of Teterboro Airport

has been approved by the Pan Am Board of Directors, it was announced today by Juan T. Trippe, Chairman and Chief Executive.

Negotiations commenced over a year ago, when a Letter of Intent was executed.

Mr. Trippe also announced that the Pan Am Board had approved an agreement to operate and develop Republic Aviation Airport at Farmingdale, New York.

Teterboro Airport in New Jersey is just eight miles west of the Pan Am Building. Republic Airport is 29 miles east, on Long Island.

The Teterboro agreement would become effective on completion of runway extensions some months hence and will run for a period of 30 years. The Republic Airport contract is also for 30 years, but subject to termination if sold by its owner, Mr. Joseph Mailman. Under terms of the agreement, Fairchild Hiller, a major aircraft manufacturing firm located at the airport, retains use of the airport's runways.

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Both the Teterboro and Republic contracts are subject to approval by the Civil Aeronautics Board.

Development of Teterboro and Republic as first class general aviation airports will provide alternate accommodations for the business aircraft and air taxis that now account for a third of the air traffic at John F. Kennedy International, Newark and LaGuardia airports. All three are now approaching saturation.

Mr. Trippe said:

"Delays to transport aircraft awaiting clearance for takeoffs and landings are costly to the airlines and becoming intolerable to many thousand business and vacation passengers arriving or leaving New York every day. The many hundred business aircraft and air taxis utilizing the three major Metropolitan airports are now equally delayed. Commerce and business in the city today are handicapped and injured.

"Pan Am--as a major international airline with many years of experience, at home and abroad, in airport construction and development--is assisting therefore in the development of alternate airports in the Metropolitan area to reduce air traffic delays.

"Also many corporate customers of Pan Am's Business Jets Division desire improved airport facilities to save time for their executives by avoiding takeoff and landing delays inherent in their continued use of the three crowded airports."

The airports will accommodate private and business aircraft as well as air taxis and helicopters operating to the Metropolitan area. No airline transports, under terms of the contract with the Port of New York Authority, will be permitted to land at Teterboro.

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At Teterboro, Pan Am will share with the Federal Government the expense of extending and widening the runways. The Port of New York Authority will be reimbursed by Pan Am in annual payments for the cost of present airport facilities. Fixed base facilities will be constructed to service and fuel all visiting aircraft. Pan Am also expects to provide a number of new hangars as well as terminal facilities for passengers and pilots, including waiting rooms, a restaurant and other accommodations.

At Republic Airport, existing runways are adequate for all business aircraft. However, a new passenger terminal, an improved control tower and modern air navigational facilities are planned.

To encourage use of the new airports by business aircraft and general aviation, Pan Am expects to assist in the further development of high speed and economical air taxi shuttles between both airports and various points in Manhattan.

When available, suitable STOL aircraft (short takeoff and landing aircraft) would be included in the essential shuttle services. Such shuttle services

would be primarily for arriving or departing air passengers. However, passengers commuting between midtown Manhattan and the two airports would be accommodated on the air shuttles to the extent capacity is available when not utilized by through passengers.

An experimental ground transportation service, using 18-passenger airport coaches leaving every half hour during the business day, will be operated by Carey Co. between Teterboro and the West Side Airlines Terminal for six months beginning September 25. To assist in the transfer of general aviation traffic to Teterboro, and thereby relieve the congestion at the three major carrier airports, the major airlines, including Pan Am, have agreed, on an experimental basis, to make up any deficits incurred by the Carey service.

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New ground facilities, including hangars, terminals and fixed base facilities at the two airports are expected to cost over \$20,000,000.

Pan Am, it was pointed out, is still subsidizing the midtown helicopter service from the Pan Am Building heliport to expedite passenger travel to and from Kennedy Airport. The new contracts Pan Am has undertaken at Teterboro and Republic Airport are also expected to result in a loss for some time and probably until large scale operations at the new airports have been developed.

For 40 years, Pan Am has been engaged, at home and abroad, in building managing and developing airports.

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NEW \$2.7 MILLION TERMINAL INCLUDED IN

PAN AM DEVELOPMENT PLAN FOR TETERBORO AIRPORT

Construction of a new, \$2.7 million terminal, rehabilitation of existing hangars and major runway and taxiway expansion is included in Pan American World Airways' \$20 million capital improvement plan for Teterboro Airport in New Jersey.

The modern terminal, a multiple-deck, half-moon-shaped structure

providing 50,000 square feet of space, will be the focal point of a complex of buildings and hangars located in the now-vacant south section of the field. The terminal will be designed specially for use by business and private aircraft.

Adjacent to the terminal will be two hangars for fixed base operators. A fixed base operator is an independent company which offers storage area, fueling and maintenance services to both local and itinerant aircraft. Each fixed base hangar will provide about 126,000 square feet of space and will be constructed at a cost of about \$2 million.

Nineteen smaller hangars, each providing 20,000 square feet of space, will be constructed on either side of the terminal. These hangars will be offered for rent to firms owning corporate aircraft such as a twin-engine business jet.

Three automobile parking lots, two for long-term parking and the other for short-term parking, will be located in front of the terminal. The three lots will provide spaces for over 1100 automobiles or buses.

On the runway side of the terminal, a space will be reserved for commercial helicopter landings and take-offs.

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Before Pan Am assumes management of Teterboro, the airport's prime instrument runway, Number 6-24, will be extended from 5,000 feet to 6,000 feet. Later, a second runway, Number 1-19, will be extended from the present 5,000 feet to 7,000 feet. Ultimately, it is hoped that Runway 1-19 will be developed into an instrument runway.

In conjunction with the runway expansion, Pan Am's plans also call for extension of present taxiways and construction of new ones.

According to present plans, the construction of the new terminal and hangars, as well as the runway and taxiway expansion, is programmed over a five-year period, from 1967 to 1971. During this time, existing buildings, hangars and aircraft parking facilities located on the west side of the field

will be refurbished and expanded.

This phase of the program will include rehabilitation of some structures, demolition of others and possible construction of new rental hangars for private and business aircraft.

The new terminal will be the principal arrival and departure point for corporate, private and charter aircraft, as well as for commercial helicopters operating to and from the Pan Am Building in downtown New York; to and from John F. Kennedy International Airport in suburban Jamaica; and to and from other points in the New York Metropolitan area.

It will provide a host of conveniences and services not normally available to private and business pilots at other general aviation airports.

The terminal will have about 10 gate positions, arranged in a semi-circle around the building. Inside, the facilities will include a waiting room, a check-in counter and information desk, a helicopter check-in desk, a charter flight desk, an air taxi check-in desk and an automobile rental desk.

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Also planned are a newsstand and gift shop, bank, insurance office, restaurant, conference rooms, flight kitchen, pilot lounge and recreation rooms, Federal Aviation Administration offices and Flight Information Center and various administration offices.

The airport control tower, now located on the west side of the airport, is operated by FAA personnel. The control tower may be re-located at the new terminal.

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Exhibit BA-317
Page 1 of 5

EXCERPTS FROM PAN AMERICAN'S
ANNUAL REPORT FOR 1966

Total Business

For many years, Pan Am's business was solely air transportation. Twenty years ago, however, Pan Am diversified into other fields where its competence and experience are useful.

First came hotels to provide adequate accommodations for travelers where none existed before. Today, Inter-Continental is the largest overseas hotel chain. Pan Am's Guided Missiles Range Division serves as prime contractor to the Air Force at Cape Kennedy and at the down-range tracking stations across the Caribbean, the South Atlantic, Africa and the Indian Ocean. Pan Am's Business Jets Division develops and markets executive aircraft for corporate use. Pan Am provides technical assistance to airlines throughout the world. Today, Pan Am itself is the largest international airline with operating revenues in 1966 in excess of \$840 million.

Contract work undertaken by the Guided Missiles Range Division entailed expenditures of \$124,000,000. Gross sales of the Business Jets Division amounted to \$33,000,000. Technical Assistance Programs expenditures totaled \$1,300,000. Inter-Continental's operating revenues for the year 1966 were \$30,000,000. For all Pan Am services, annual dollar volume now exceeds a billion dollars.

* * *

Dual-cockpit digital computers to provide simulated flight training for Pan Am crews have been installed at Company bases at New York, Miami, and San Francisco. It is forecast that the use of these new computers along with

two analogue flight simulators will save your Company \$5,000,000 in training costs in 1967.

Use of your Company's \$28,000,000 computer complex, Panamac, has resulted in cost savings of \$3,000,000 during the year. The use of Panamac has enabled the Company to handle the large increase in passenger, cargo and data processing volume.

* * *

Helicopter Service

Throughout the year New York Airways has provided helicopter service between the Pan Am Heliport, atop your Company's home office in midtown Manhattan, and the Pan Am Terminal Building at Kennedy International Airport. In the first year of this service, more than 150,000 travelers overflowed surface traffic congestion. Pan Am leases to New York Airways the three Boeing V-107 helicopters employed in this service. Your Company owns 29 per cent of the New York Airways outstanding stock and also underwrites the helicopter service to the Pan Am terminal at Kennedy Airport.

Early in March, 1967, helicopter operations were extended to Teterboro and Westchester County Airport, thereby providing direct service from northern New Jersey and Westchester to the Pan Am Terminal at Kennedy Airport.

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PAN AMERICAN WORLD AIRWAYS, INC.

**BALANCE
SHEETS**

December 31, 1966 and
December 31, 1965

ASSETS:	1966	1965
CURRENT ASSETS:		
Cash	\$ 36,922,000	\$ 32,877,000
Short-term cash investments (at cost)	25,900,000	5,000,000
Notes and accounts receivable	126,958,000	90,856,000
Flight equipment expendable parts (net: after reserve for obsolescence: 1966, \$7,120,000; 1965, \$6,443,000)	20,806,000	19,963,000
Miscellaneous materials and supplies	12,931,000	10,826,000
Equipment purchases for resale and deposits	27,168,000	17,071,000
Other	3,581,000	3,825,000
Total current assets	254,266,000	180,418,000
INVESTMENTS AND SPECIAL FUNDS:		
Stock of associated companies (at cost— estimated equity based on their book values: 1966, \$38,700,000; 1965, \$44,700,000)	27,773,000	27,269,000
Non-current advances to associated companies	2,160,000	1,911,000
Advances on equipment purchase contracts	80,053,000	45,417,000
Other (Note 2)	7,006,000	8,749,000
OPERATING PROPERTY AND EQUIPMENT (at cost):		
Flight equipment	828,408,000	662,871,000
Ground property and equipment	104,195,000	90,608,000
Land	13,000	13,000
Construction work in progress	21,735,000	16,836,000
	<u>854,351,000</u>	<u>770,328,000</u>
Less: Reserves for depreciation:		
Flight equipment	262,918,000	238,348,000
Ground property and equipment	48,627,000	42,350,000
	<u>311,545,000</u>	<u>280,698,000</u>
Operating property and equipment—net	542,806,000	489,630,000
DEFERRED CHARGES AND SUNDRY BALANCES RECEIVABLE:		
Development and preoperating costs—net	12,474,000	14,543,000
Long-term prepayments	3,444,000	3,311,000
Other	9,467,000	6,475,000
	<u>\$1,039,449,000</u>	<u>\$777,723,000</u>

See notes to financial statements

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LIABILITIES AND STOCKHOLDER EQUITY:

	1966	1965
CURRENT LIABILITIES:		
Accounts payable and accrued liabilities . . .	\$ 48,847,000	\$ 48,630,000
Collections as agent—traffic and other . . .	11,152,000	11,409,000
Accrued compensation and vacation pay . . .	18,891,000	14,251,000
Accrued taxes	21,851,000	20,871,000
Accrued interest	7,629,000	5,974,000
Unearned transportation revenue	48,806,000	45,670,000
Total current liabilities	157,176,000	146,805,000
LONG-TERM DEBT (Note 3):		
Notes payable	190,100,000	200,000,000
Convertible subordinated debentures . . .	226,632,000	80,367,000
Other	12,216,000	15,255,000
DEFERRED CREDITS:		
Federal income taxes	67,301,000	49,218,000
Investment credit (Note 5)	3,065,000	3,582,000
Other	3,742,000	7,302,000
STOCKHOLDER EQUITY:		
Capital stock—50 cents par value per share .	8,113,000	7,426,000
Other paid-in capital	124,436,000	95,503,000
Retained earnings (Note 3)	247,374,000	172,971,000
	379,923,000	275,900,000
Less: Treasury stock (at cost)	706,000	706,000
Stockholder equity—net	379,217,000	275,194,000
	\$1,039,449,000	\$777,723,000
SHARES OF CAPITAL STOCK:		
Authorized	30,000,000	30,000,000
Issued: outstanding	16,129,463	14,754,075
in treasury	97,128	97,128
Reserved for conversion of debentures . . .	4,365,568	3,399,601
Reserved for options issued	301,739	368,891
Reserved for options not yet issued	32,209	55,957



PAN AMERICAN WORLD AIRWAYS, INC

STATEMENTS OF INCOME

For the Calendar Years
1966 and 1965

OPERATING REVENUES:

Transport:

	1966	1965
Passenger	\$572,008,000	\$476,153,000
United States mail	95,796,000	49,817,000
Foreign mail	6,291,000	5,921,000
Property cargo	102,356,000	88,289,000
Property-excess baggage	8,966,000	7,789,000
Charter and other transport revenue	60,340,000	32,779,000
Nontransport revenues-net (Note 9)	(4,793,000)	8,271,000
Total operating revenues	840,967,000	669,019,000

OPERATING EXPENSES:

Flying operations	185,671,000	148,167,000
Maintenance	104,927,000	86,199,000
Passenger service	77,491,000	58,655,000
Aircraft and traffic servicing	122,558,000	100,182,000
Promotion and sales	116,645,000	98,969,000
General and administrative	31,389,000	30,512,000
Depreciation and amortization	70,290,000	60,878,000
Total operating expenses	708,971,000	583,562,000
Operating profit	131,996,000	85,457,000

NONOPERATING INCOME:

Interest income	1,897,000	733,000
Dividend income	615,000	472,000
Capital gains-net	407,000	1,183,000
	2,919,000	2,388,000
Total	134,915,000	87,845,000

NONOPERATING EXPENSE:

Interest expense	19,049,000	14,975,000
Interest capitalized	(3,598,000)	(2,149,000)
Other nonoperating expense-net	2,430,000	1,554,000
	17,881,000	14,380,000

Income before income taxes	117,034,000	73,465,000
INCOME TAXES (Note 5)	45,081,000	26,190,000

Income before extraordinary items	71,953,000	47,275,000
---	------------	------------

Extraordinary items, less applicable income taxes (Note 6)	11,781,000	4,800,000
--	------------	-----------

Net income	\$ 83,734,000	\$ 52,075,000
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PER SHARE (Note 7):

Income before extraordinary items	\$4.62	\$3.28
Extraordinary items, less applicable income taxes75	.33
Net income	5.37	3.61

See notes to financial statements

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	1966	1965
Revenue airplane miles (millions)	182	145
Available seat-miles (millions)	20,642	17,062
Revenue passenger-miles (millions)	13,224	9,871
Passenger load factor	64.1%	57.9%
Revenue passengers (thousands)	7,304	5,840
Average number of passengers per flight	79	73
Average length of trip, in miles	1,811	1,690
Available ton-miles (millions)	3,733	2,894
Revenue ton-miles—all classes of traffic (millions)	2,250	1,601
Revenue ton-mile load factor	60.3%	55.3%
Operating cost per available ton-mile	19.0¢	20.2¢
Operating cost per revenue ton-mile	31.5¢	36.5¢
Revenue ton-miles—cargo (millions)	526	423
Miles of route	77,818	76,375

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Exhibit BA-321
Page 1 of 1

26% OF THE PAN AMERICAN SYSTEM'S PASSENGERS
ENPLANED OR DEPLANED AT NEW YORK

Total PAA System - FY 1966

Scheduled Passengers Enplaned^{1/} 6,082,000

New York/Newark, N.J.

Enplaned Passengers - Scheduled Services	779,551 ^{2/}	
Deplanements Equal to Enplanements	<u>779,551</u>	
Total New York Passengers		1,559,102

Percent of PAA System Scheduled Passengers
On and Off and New York City 26%

1/ CAB Bureau of Accounts and Statistics Publication -
Air Carrier Traffic Statistics, 12 Months Ended June 30, 1966.

2/ Airport Activity Statistics, FAA, 12 Months Ended June 30, 1966.

1517

Exhibit BA-322
Page 1 of 1

PAN AMERICAN HAS ORDERED FIVE S-61 HELICOPTERS

The following news item is from the Wall Street Journal of
February 14, 1968:

Pan Am Orders Five Copters

NEW YORK—Pan American World Airways has ordered five S61 28-passenger commercial helicopters from Sikorsky aircraft division of United Aircraft Corp. The price wasn't disclosed but the planes usually sell for between \$800,000 and \$900,000 each.

News of the order raised a number of questions in airline circles. Pan Am didn't say to what use it would put the helicopters. Currently, the airline has no helicopter operations of its own but it's been discussing with New York Airways further financial support of that concern's flights from the Pan Am Building to New York City airports. The discussions had reached an impasse and New York Airways has said it may have to suspend flights from the Pan Am Building tomorrow if an agreement isn't reached.

1518

Exhibit BA-351
Page 1 of 1

GENERAL AVIATION AIRCRAFT IS RESPONSIBLE FOR A LARGE
NUMBER OF CONNECTING PASSENGERS AT THE PORT OF NEW
YORK AUTHORITY AIRPORTS

In a speech at the NBAA Meeting in Boston, Mass., on
October 11, 1967, Mr. John R. Wiley said:

"...Our immediate problem, then, is fairly simple:
too many aircraft want to use the same airspace at the
same time. This is immediately evident to any of you
who have used Kennedy, LaGuardia or Newark during the
peak hour. It is interesting to see what the
distribution of traffic is at these three airports at
that time:

	Peak Hour Plane Movements - 1966 Study Data			
	Region %	Kennedy %	LaGuardia %	Newark %
Airline	54	69	38	48
General Aviation	46	31	62	52

Why does general aviation use these airports at
this time? According to surveys we made in 1965, 23
out of the 30 general aviation movements during the
peak hour at Kennedy were to make airline connections,
only seven were to conduct local business. The
majority of the movements, then, were directly
related to airline scheduling. - At LaGuardia the
reverse is true: 32 out of 45 general aviation
movements in the peak hour at LaGuardia were
because of its proximity to Manhattan. At Newark
Airport the pattern is mixed..."

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Exhibit BA-401

Page 1 of 1

MOST OF THE EXISTING LEASES AT TETERBORO
CAN BE TERMINATED ON THIRTY DAYS NOTICE

The joint Press Release of Pan American and the Port of New York Authority (PNYA-1, Attachment A) states: "Existing leases between the Port Authority and the various airports' tenants will continue until their individual termination dates..."

Leases included in the Port of New York Authority information response show:

<u>Tenant</u>	<u>Termination Dates</u>
Atlantic Aviation Corporation -	30 days notice
Safair Flying Service, Inc. -	30 days notice
Teterboro School of Aeronautics, Inc. -	30 days notice, with exception of Lease AT-130 which expires November 30, 1977

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Exhibit BA-403

Page 1 of 1

PAN AMERICAN HAS UNDERWRITTEN SUBSTANTIAL
DEFICITS OF NEW YORK AIRWAYS TO PROVIDE
CONNECTING SERVICE TO PAN AMERICAN

Pan Am Support Payments to
New York Airways

1965 ^{1/}	\$ 14,047
1966 ^{2/}	1,518,441
1967 ^{3/}	1,733,852

1/ Period of December 22 - 31, 1965.

2/ Full year.

3/ First three quarters of 1967.

Source: CAB Form 41 report of New York Airways.

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Exhibit BA-405

Page 1 of 1

THE TRAFFIC FLOW PROVIDED BY GENERAL AVIATION CAN BE
QUITE PROFITABLE FOR PAN AMERICAN ON A TOP-OFF BASIS

<u>Pan Am Scheduled Departures from New York Fiscal 1967 1/</u>	<u>Assumed Number of New Passengers Per Departure</u>	<u>Pan Am Average Fare 2/</u>	<u>New Annual Revenues for Pan Am</u>
14,312	1	\$85.00	\$ 1,216,520
14,312	2	85.00	2,433,040
14,312	3	85.00	3,649,560
14,312	4	85.00	4,866,080
14,312	5	85.00	6,082,600
14,312	10	85.00	12,165,200

Note: This new revenue would be very profitable for Pan Am on a top-off basis since it would incur only a very limited amount of additional expense for a few items such as food and passenger liability insurance.

1/ Average of daily international departures from Kennedy International Airport shown in OAG June 1967 and December 1966.

2/ Average Fare: Total Passenger Revenues (Scheduled)
Passenger Enplanements

for year ended March 31, 1967.

Source: CAB Air Carrier Financial Statistics
CAB Air Carrier Traffic Statistics

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Exhibit BA-502

Page 1 of 7

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
CHIEF EXECUTIVE

S. BLFAN COLT, Chairman
JAMES C. KELLOGG, III, Vice Chairman
HOWARD S. CULLMAN, Honorary Chairman
GERARD F. DRILL
JOHN J. CLANCY
CHARLES W. ENGELHARD

E/C 9-17-66

Item III

ALEXANDER HALPERN
DONALD V. LOWE
JOSEPH A. MARTINO
BAYARD F. POPE
REN REGAN
W. PAUL STILLMAN

E/C

THE PORT OF NEW YORK AUTHORITY

111 Eighth Avenue - at 15th Street New York, N.Y. 10011

Tel. 626-7271

EXECUTIVE OFFICES

Austin J. Tobin

EXECUTIVE DIRECTOR

September 2, 1966

Mr. Juan Trippe
Chairman of the Board
Pan American World Airways, Inc.
200 Park Avenue
New York, N.Y.

Dear Juan:

To repeat the tenor of our discussion last Tuesday afternoon, I know that we were both disappointed that, after a year of earnest effort we were unable to find a mutually acceptable solution to our respective problems in working out an arrangement, along the lines of our memorandum of August 6, 1965, under which Pan Am would have taken over the operation of Teterboro Airport. You and I are in agreement, however, that we ourselves, as well as our respective staff representatives, tried in every possible way to resolve these problem areas and to work out the provisions of a definitive agreement. The fact that we were unable to do so does not reflect in any way upon the hard and sincere effort which was made by both Pan American and the Port Authority to find answers that would be mutually acceptable.

I reported the outcome of our discussions to our Commissioners yesterday and in doing so, expressed my warm appreciation for the time which you personally have spent in trying to work this project out.

It is of real satisfaction to know, also, that you believe, as we do, that Pan American can gain from a major association with the Port Authority

in the revitalization and future development of Teterboro. I have, therefore, asked Warren Cooper to open discussions of such an association with Al Adams and Captain Studeman and to review with them the areas of development which Pan Am might be interested in on a leasehold basis.

We are regularly asked by the Bergen Record and the Newark News about the status of our Teterboro negotiations. While we do not plan a formal release, I asked our public relations people to outline the type of statement

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that I might make whenever the pressure for a definitive comment makes such a statement necessary. I have in mind also that at some step, I must advise Governor Hughes of our inability to work out the arrangement that he supported in his own public statement last year. I am, however, very anxious that any statement I make be satisfactory to Pan American, and I have, therefore, asked our Director of Public Affairs, Mike Moynihan, to discuss this draft with Willis Player. cite 3

Sincerely,



Austin J. Tobin
Executive Director

1537

PRO FORMA DRAFT OF RELEASE FOR CONSIDERATION BY PAN AMERICAN AND
PORT AUTHORITY

Asked for comment on the status of negotiations between The Port of New York Authority and Pan American World Airways regarding Teterboro Airport, Austin J. Tobin, Executive Director of the bi-state agency said:

"The plans for Teterboro Airport, announced jointly by Pan Am and the Port Authority last year, were designed to bring the convenience of ~~an airline~~ ^{airline aircraft} to Teterboro. They envisioned a revitalization and redevelopment of the airport, including the establishment of the main base of Pan Am's corporate plane division there. This would bring new employment to the area in addition to increasing the airport's value to Northern New Jersey as a transportation facility.

"Originally, these ends were to be achieved under a long-term agreement which would provide for the continued operation of Teterboro as a public airport owned by the Port Authority, but with Pan Am responsible for

capital improvements and day-to-day operation. After more than a year of intensive negotiations, Pan Am and the Port Authority have reached the conclusion that the same benefits can be achieved without transferring responsibility for the operation of this public facility, and without the legal, technical and financial complications inherent in such an arrangement.

"The negotiations are therefore proceeding on the assumption that the Port Authority will continue to operate and improve the airport. A lease under which Pan Am would become [one of] Teterboro's major tenants] is now under discussion. This would bring an important new industry to Bergen County, as originally planned.

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"The Port Authority regrets that unforeseen difficulties necessitated this change in plans, thereby delaying the improvement of Teterboro, but the goal has not changed. Pan Am has shown its vital interest in the future of Teterboro by the earnest efforts it has devoted to the negotiations and on planning its proposed facilities at the airport. I am sure that further negotiations will be carried on in the same atmosphere of cooperation and mutual understanding, and that the end result will be, as we put it last year, 'a bright future for Teterboro Airport'."

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DOCUMENTS FROM THE FILES OF
PAN AMERICAN WORLD AIRWAYS

THE PORT OF NEW YORK AUTHORITY

111 Eighth Avenue-at 15th Street, New York, N.Y. 10011

COMMISSIONERS

S. Sloan Colt, Chairman
James C. Kellogg, III, Vice Chairman
Howard S. Cullinan, Honorary Chairman
Gerard F. Brill
John J. Clancy
Charles W. Engelhard

Alexander Halpern
Donald V. Lowe
Joseph A. Martino
Bayard L. Pope
Ben Regan
W. Paul Stillman

Austin J. Tobin, Executive Director Telephone 620 7271

January 16, 1967

Mr. Juan T. Trippe
Pan American World Airways
Pan Am Building
New York, New York 10017

Dear Juan:

I am enclosing a copy of the agenda item and the resolution subsequently passed by the Board last Thursday authorizing us to go forward with the extension of Runway 6-24 by 1000 feet so that its over-all length will be extended to 6000 feet and also to extend Runway 1-19 by 2000 feet so that its over-all length will be 7000 feet.

As the agenda and the resolution note, the extension of these runways is in accordance with the thinking of both Pan American and the Port Authority with respect to the future development of Teterboro. As you probably know, in your absence I reviewed this action with Harold Gray on Friday.

Sincerely,


Austin J. Tobin
Executive Director

Enclosures

Handwritten notes:
J. R. in Mon
J. R.
1-19
2-24
J. R.

1543

(Executive Session)

No. 5TETERBORO AIRPORT - DEVELOPMENT PROGRAM - RUNWAY EXTENSIONS


RECOMMENDATION: That the Board authorize a project for the extension and improvement of Runways 6-24 and 1-19 at Teterboro Airport at a total estimated project investment of \$3,691,000 including payments to contractors, an allowance for extra work and engineering, administrative and financial expenses.

REPORT: The Port Authority and Pan American World Airways, Inc. are conducting negotiations for the proposed thirty-year operation of Teterboro Airport by Pan American. In August 1965, these negotiations resulted in an understanding between the parties covering the proposed operation of Teterboro as a public airport for general aviation purposes. Copies of letters covering such understanding were placed before the Board and were approved at its meeting on September 9, 1965. The full arrangement is to be covered by definitive agreement, the terms of which are subject to the approval of the Board and the Board of Directors of Pan American.

Negotiations covering the definitive agreement have been carried on continually since then and are being conducted quite actively at the present time; however, there still remain several unresolved issues.

During this lengthy negotiation, it has been increasingly evident that in order to adequately accommodate modern corporate and private aircraft at Teterboro, not only should Runway 6-24 be extended 1,000 feet to 6,000 feet and widened, as originally planned, but Runway 1-19 should be extended 2,000 feet to 7,000 feet and also widened. The extension of Runway 1-19 would make it acceptable for use as a preferential runway in crosswind conditions and will provide an added margin of safety to compensate for typical northwest wind conditions prevalent in the area. The proposed extension of 1,000 feet for Runway 6-24 and 2,000 feet for Runway 1-19 with associated taxiways, lighting, modifications to the existing approaches light system and related work is concurred in by Pan American and is consistent with negotiations now in progress.

In order that the capacity of Teterboro Airport continue to be developed and made available to accommodate a portion of the substantial amount of general aviation traffic which is projected for the New York metropolitan area, it is necessary that the Port Authority should continue to proceed with a developmental program for Teterboro Airport whether or not a definitive agreement is entered into with Pan American. The proposed runway improvement program is a logical initial step in such a program.



1544

(Executive Session)

No. 5 (Cont)

It is contemplated that Federal Airport Aid should be available in an amount of approximately \$1,500,000 applicable to the runway construction and in an amount of over \$2,000,000 applicable to previous airport land acquisition cost. It is intended that applications for such Federal Airport Aid will be filed at the earliest possible date and if such aid is not granted, further Board authorization will be sought prior to the actual award of the runway construction contracts. Of the total amount of Federal Aid potentially available, the FAA has just recently announced that it is earmarking \$504,000 for Teterboro runway improvements in fiscal year 1967.

Resolution for adoption.

1545

(23)

Teterboro Airport - Development Program - Runway Extensions

It was reported that in order to adequately accommodate modern corporate and private aircraft at Teterboro Airport, Runway 6-24 should be extended 1,000 feet to a length of 6,000 feet and Runway 1-19 should be extended 2,000 feet to a length of 7,000 feet. Both runways should also be widened.

It is contemplated that Federal Airport Aid of approximately \$1,500,000 should be available for runway construction and it is also intended that Federal Airport Aid will be requested for over \$2 million for previous airport land acquisition cost. Application for such Federal Airport Aid will be filed at the earliest possible date. In August 1965, negotiations between Pan American World Airways, Inc. and the Port Authority resulted in an understanding between the parties covering the proposed operation of Teterboro as a public airport for general aviation purposes. The full arrangement is to be covered by definitive agreement. Negotiations covering the definitive agreement have been carried on continually since then and are continuing actively.

It was therefore recommended that the Board authorize a project for the extension and widening of Runways 6-24 and 1-19 at Teterboro Airport. The expenditure for such project is presently estimated at \$3,691,000 including

payments to contractors, an allowance for extras and engineering, administrative and financial expenses.

Whereupon, the following resolution was moved for adoption by Commissioner Halpern, the motion being seconded by Commissioner Clancy:

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(24)

RESOLVED, that the following project be and it hereby is authorized at Teterboro Airport, the cost of such project presently being estimated at approximately \$3,691,000, including payments to contractors, an allowance for extras and engineering, administrative and financial expenses: extension of Runway 6-24 by approximately 1,000 feet and Runway 1-19 by approximately 2,000 feet and widening of both runways.

With the following result:

AYES: Colt, Kellogg, Pope, Lowe, Halpern, Clancy, Regan, Stillman, Engelhard, Brill
NOES: None

Carried.

1547

October 12, 1966

N. E. H.

RECEIVED IN THE OFFICE OF
VICE PRES & GEN'L COUNSEL

The latest meeting with officials of the Port Authority was held in the Pan American offices Monday, October 10th. The Port was represented by Messrs. Cooper and Simmons; and Pan American by Messrs. Pirie, Studeman, Steege and the undersigned. The Port representatives advised us at the start of our conversations that they had been able to discuss the Teterboro matter with Mr. Tobin late Friday afternoon. However, because of Mr. Tobin's scheduled departure Monday evening for an extended trip to the Orient, and the pressure of other business, their time was quite limited.

Mr. Cooper stated that he and Mr. Simmons had reported to Mr. Tobin Pan American's proposal, which Pan American felt reflected, in

general, the latest discussions between Messrs. Trippe and Tobin. However, it appeared that it was Mr. Tobin's understanding that Pan American was simply to become a major tenant of the airport. It would locate their Business Jets operation at Teterboro and would hopefully encourage its sales and service agent, Pacific Airmotive, to establish a base there. Further, Pan American would assist and cooperate with the Port in the future development of Teterboro, such as, for example, providing helicopter service. It was crystal clear in their mind that the arrangement as contemplated by Mr. Tobin involved nothing more than a lease of land (the amount and cost unspecified); that if we could

1548

develop a business from such a lease, it would be up to us to do so; and that we would assist the Port in encouraging corporations to utilize the Teterboro facilities. As an inducement, it was their understanding that under the new arrangement the Port would commit to continue Teterboro as an airport for 20 years - would proceed promptly with the widening and lengthening of runway 6-24, with a good possibility of widening and lengthening runway 1-19 also at some later date. They also felt that there was a strong likelihood of their undertaking the construction of a passenger terminal. They remarked further that they would like to progress the ground transportation services in line with what Pan American had proposed initially.

Certainly, if the staff reported Mr. Tobin's views accurately - he had either not focused carefully on the merits of the Pan American program which we thought reflected the latest Trippe/Tobin discussions, or that the Port wishes to proceed itself with the original Pan American airport develop-

ment and business plan.

It was clear that Messrs. Cooper and Simmons at this point are simply reporting, as carefully as possible, Mr. Tobin's views. They certainly understand fully the program which we have advanced, and, I believe, its merits. However, they are in no position to progress the situation in Mr. Tobin's absence.

CC: J. C. P. ✓

D. L. S.

O. J. S.

A. P. A.

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Exhibit BA-504
Page 1 of 13

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
SENIOR VICE PRESIDENT



PAN AMERICAN
WORLD'S MOST EXPERIENCED AIRLINE



JTT:

3/25/66

As you requested on the way to the helipad, you will find attached two summary memos re Teterboro. They raise all the issues which we would like to review before your meetings with Tobin, Colt & Kellogg on Monday or Tuesday.

RZH

PS Note the last page reference to noise complaints.

1550

March 23, 1966

To: N.E.H.
A.P.A.

Subject: Current Status - Teterboro

I - PAA/PNYA Contract

Contract negotiation with the PNYA is, for all practical purposes, deadlocked on those items set forth in Mr. Pirie's memorandum of March 21, 1966. In summary, those items are:

1. Commencement of contract term.
2. Limitation on competitive activities relating to helicopter operations.
3. Calculation of percentage fee payable to the PNYA on gross receipts in excess of \$5,000,000.
4. Designation of representatives in PAA and the PNYA with direct responsibility for administration of the contract.
5. Cost of construction for purposes of reimbursement and amortization.
6. Arbitration provision.
7. Noise claims.

II - TAMS Development Plan

The final report from Tippetts-Abbett-McCarthy-Stratton is expected during the week beginning March 28, 1966.

The TAMS Report will recommend a total capital investment of

1551

\$22,373,000 during the first five years of the contract (1966-1971) in runway and taxiway improvements, terminal building and ramp area, fixed-base operator facilities and corporate hangar facilities. The report estimates that \$3,075,000 will be available in Federal grant funds, leaving a PAA balance invested of \$19,298,000.

The TAMS Report projects an increase in revenues from approximately \$800,000 in 1966 to some \$4,000,000 in 1971.

Assuming that the 1971 projected profit level can be sustained throughout the term of the contract, it is calculated that the net PAA return after taxes will be 12.2 per cent on the average investment throughout the term.

III - Operation Considerations

While the TAMS study is based on present air traffic procedures, limiting the airport to a maximum of some 36 hourly aircraft movements under instrument conditions, continuing effort will be required to develop and maintain a fair share of metropolitan traffic for Teterboro.

An acceptable means of phasing out the light plane traffic at TEB, as TAMS projects, must be found in order to accommodate the projected build-up of heavier business aircraft traffic.

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Under certain wind conditions, IFR traffic interaction, between TEB and EWR/LGA curtails the projected TEB IFR capacity. While the FAA Common IFR Room (controlling all IFR traffic from a single center at JFK), planned for implementation in 1967, will assist somewhat in improved utilization of total metropolitan airspace, it is considered that improved IFR procedures for TEB are required. Our efforts with the FAA on this matter have produced no tangible results to date.

TEB at present has a single direction instrument approach to Runway 6, with circling to land on other runways requiring a ceiling of 1,000 feet. The FAA has been requested to provide an instrument approach to Runway 24 but has advised "not at this time" due to problems of traffic interaction. Instrument approach to the south will be required for proper, long-range development of the airport.

Runway 1-19, extended to 7,000 feet as per the TAMS report, is the optimum runway at TEB for turbine-powered aircraft, both as to aircraft performance and noise abatement procedure. While presently approved for instrument take-off, obstructions in the form of radio towers at each end of the runway prevent consideration for instrument landing. IFR traffic interaction with EWR and/or LGA further complicate designation of this runway as an in-

strument landing runway. Discussions have been initiated with the FAA on a long-range program for elimination of radio tower

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obstructions.

Noise is reported not a serious problem at the present time. The FAA Control Tower advises that it has been more than a year since receipt of a noise complaint. With the change in type of aircraft projected in the TAMS report, noise will undoubtedly become an increasing problem. Present planning contemplates continuation of the standard PNYA noise abatement procedure at TEB.

O.J.S.

1554

March 21, 1966

MEMORANDUM TO MESSRS. TRIPPE
GRAY
HALABY /
ADAMS
STUDEMAN

Re: Teterboro

The following are the open items in our negotiations with the Port Authority:

1. Commencement of term and obligation to pay rent.

Port Authority position: term to commence when agreement approved by CAB.

Pan Am position: term to commence when runway construction completed.

2. Limitation on competitive activities relating to helicopter operations.

Port Authority position: set forth in Annex 1A hereto.

Pan Am position: set forth in Annex 1B hereto.
This would appear in paragraph (c) of Section 2, which limits air transport operations and specifies those that are permitted, including helicopter operations.

3. Adjustment of gross receipts to take account of all or part of investment for purposes of calculating percentage fee.

Port Authority position: set forth in Annex 2A hereto.

Pan Am position: set forth in Annex 2B hereto.

4. Designation of representatives authorized to make decisions.

Port Authority position: Messrs. Trippe and Tobin should be designated.

Pan Am position: set forth in Annex 3B hereto.

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5. Arbitration.

Port Authority position: no arbitration clause.

Pan Am position: broad arbitration clause covering all disputes.

6. Noise claims.

Port Authority position: Pan Am responsible for all such claims against either party with Port Authority having option to defend.

Pan Am position: need some relief not specified.

In addition to the comments contained in my memorandum dated February 11, 1966, the following should be noted:

1. Under the default clause, if Pan Am is prevented from operating for 60 days as a result of government action, regardless of Pan Am fault, the Port Authority can terminate. The Port Authority would have no other remedy in such event, but Pan Am would lose its investment.

2. The Agreement contemplates that all agreements with users and tenants will terminate when the Pan Am agreement terminates. If Pan Am makes any other agreement with a user, the responsibility would be that of Pan Am;

3. The cost of construction for purposes of reimbursement and amortization is to be amount paid to outside contractors plus a fixed percentage. The percentage has not yet been agreed, but we have proposed 20% and expect that we can agree on a reasonable number.

4. I am to receive a formal opinion from New Jersey counsel on the tax aspects and other matters of New Jersey law. He has indicated no problem thus far, but some may arise when he has the final form of the Agreement.

Attachments

John C. Pirio
John C. Pirio

cc: D. L. Steege

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Exhibit BA-506
Page 1 of 5

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
VICE PRESIDENT

October 18, 1966

N. E. H.

Following Mr. Trippe's recent discussions with Mr. Tobin to resolve the Teterboro contractual differences, or, to find a new overall approach to the problem which might obviate the difficulties encountered under the original concept, a number of meetings were held between the staffs of both organizations to discuss in more definitive detail a new program which, it was understood, formed a mutually acceptable basis from which we could move forward.

Unfortunately, from the inception of the staff discussions, there appeared to be a substantial divergence of views as to the new arrangements with which, it was thought, the two principals were in general accord.

The new concept, as the Pan American staff understood it, contemplated

the division of the operating and financial responsibilities of Teterboro between Pan American and the Port; the latter retaining responsibility for the development and operation of the public landing areas, - while Pan American's obligations were to be the development and operation of the airport facilities, including a passenger terminal, construction and leasing of hangars, rehabilitation of present hangar facilities, fixed-base operations, etc.

The Port's staff understood the new arrangements called for the maintenance of Teterboro under complete control of and operation by the Port - with Pan American

1572

assuming the position of a major lessee.

The program, which Pan American felt was a practical and mutually attractive approach under the broad framework of the new concept, proposed the following:

1. Thirty-year term.
2. Port responsible for runways and related taxiways, developing along lines of TAMS Master Plan.
3. Pan American responsible for development of all facilities and services at the airport other than public landing areas.
4. Port to collect all landing fees and pay all costs of maintaining and operating landing areas and related facilities. In addition, Port to receive a gallonage fee on fuel - plus yearly fee from Pan American for latter's operating rights and privileges. (A fuel fee of 2¢ per gallon plus an annual fee of \$500,000

from Pan American should net the Port better than a 7% return on their investment.) Although no specific amounts were discussed with the Port staff, we pointed out that acceptable fees would permit them at least 7% return. Further, Pan American might be agreeable to the payment of a certain percentage of its earnings after it had earned a 10% return after taxes on its investment.

1573

5. Port to assume costs of condemnation and expenses from noise litigation. However, Pan American would recognize condemnation costs as a capital item to be added to their investment base with modification of fees in some equitable manner. As to noise, Pan American might reserve a figure of, let us say, \$50,000 per year for 10 years against possible noise damage awards, with any overage reverting to Pan American after said 10 years. (Note--Above details not mentioned to staff - certain broad hints that Pan American might be willing to participate to some extent.)

6. Pan American to proceed promptly with development of the south area of Teterboro including a Passenger Terminal, hangar accommodations for fixed-base operator and a limited number of corporate operators; and rehabilitation of the presently occupied west area. Total commitment mentioned was between \$9 and \$10 million. Pan American to provide also additional hangars and related facilities as may be required - and, if demand warrants, develop the east area of the airport for such purpose.

7. Pan American to receive all income from rentals and/or leases - including commissions and fees negotiated by it with tenants and customers. (On estimate of \$19,500,000 investment, which excludes the east-side development,

a profit of 14% return after taxes has been forecast over life of a 30-year contract - amortizing investment over 15 years.)

1574

8. The Port to promulgate rules and regulations for airport flight operations and to actively pursue with FAA, the problem of airway traffic control procedures, including installation by latter of required instrumentation to permit Teterboro an equitable division of traffic in metropolitan area.

Port Authority's staff position based on their conversations with Mr. Tobin is about as follows:

- A. Port Authority to retain complete supervision and overall management responsibility of Teterboro- no division with Pan American.
- B. Pan American most welcome as a major tenant leasing certain acreage (terms undisclosed) - primary purpose (they thought) moving Business Jets activities to Teterboro - hopefully influence Pacific Airmotive to establish operating base and encourage Falcon customers and other corporate operators to move activities there. Expressed desire that Pan American establish helicopter service. Welcomes Pan American's broad cooperation in developing and revitalizing Teterboro as major General Aviation airport. Port is silent on how we are to conduct a meaningful business under this concept.

C. In order to encourage us to become a tenant, they appear to be willing to:

- (1) Operate the property as an airport for 20 years;

1575

- (2) Extend and widen runway 6-24 and possibly runway 1-19;
- (3) Consider building an appropriate passenger terminal;
- (4) Consider feasibility of providing improved surface transportation along lines proposed originally by Pan American.

I have the feeling that the Port's staff appreciates the advantages of Pan American's program. However, Mr. Tobin, I believe, because of business pressure prior to his departure has simply not focused sufficiently on the details and the merits of the program to understand clearly its advantages. It is suggested therefore that the program as outlined herein be transmitted in writing to the Port Authority, and discussed in detail with Mr. Tobin, on his return, by Mr. Trippe. The only other alternative, as I view the situation, would be for us to go back to the original contract and treat with the condemnation and noise problem as suggested in Paragraph 5 of this memorandum. This was the major block to a settlement of the original agreement. They might accept such an arrangement; but again they might not. It should be realized that the Port's objective, assuming they do not wish to operate Teterboro themselves (which I am inclined to think they now wish to do), is a guaranteed 7% return on their investment and freedom from noise exposure.

A. P. A.

A. P. A.

CC: J. C. P.
D. L. S.
O. J. S.

1576

Exhibit BA-507

Page 1 of 8

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
GENERAL MANAGER, METROPOLITAN AIRPORTS DIVISION

November 12, 1965

To: A.P.A.
N.E.H.

TETERBORO AIR TRAFFIC

The limitation of Teterboro air traffic capacity under Instrument Flight Rules (IFR) was recently highlighted in the Port of New York Authority press release of October 26, 1965, made in response to the Metropolitan Air Lines Committee press release of the same date. The PNYA letter to the governors of New York and New Jersey, which was made a part of this official press release, stated, in part, as follows:

"The Port Authority's staff and our consultants are of the opinion that neither Teterboro, Floyd Bennett Naval Air Station nor some airport in Staten Island could be safely operated under instrument weather conditions without severe interference with, and penalties to, the maintenance of regular airlines and general aviation traffic into and out of Kennedy, LaGuardia and Newark Airports.

In the case of Teterboro, Your Excellency will recall that its maximum development as a general aviation airport is actively under way under the terms of the agreement between the Port Authority and Pan American World Airways, which was announced last August. For Teterboro, maximum development still means, however, that it will have a very limited capacity during poor weather conditions when Instrument Flight Rules (IFR) are in effect."

Present Situation

The present maximum level of IFR demand at TEB is approximately 19 to 15 hourly movements. Past discussions with the FAA indicate a maximum potential IFR capacity for TEB at approximately 35 to 40 hourly movements. Under date of November 2, 1965 we were advised in writing by the FAA, as follows:

1575

- (2) Extend and widen runway 6-24 and possibly runway 1-19;
- (3) Consider building an appropriate passenger terminal;
- (4) Consider feasibility of providing improved surface transportation along lines proposed originally by Pan American.

I have the feeling that the Port's staff appreciates the advantages of Pan American's program. However, Mr. Tobin, I believe, because of business pressure prior to his departure has simply not focused sufficiently on the details and the merits of the program to understand clearly its advantages. It is suggested therefore that the program as outlined herein be transmitted in writing to the Port Authority, and discussed in detail with Mr. Tobin, on his return, by Mr. Trippe. The only other alternative, as I view the situation, would be for us to go back to the original contract and treat with the condemnation and noise problem as suggested in Paragraph 5 of this memorandum. This was the major block to a settlement of the original agreement. They might accept such an arrangement; but again they might not. It should be realized that the Port's objective, assuming they do not wish to operate Teterboro themselves (which I am inclined to think they now wish to do), is a guaranteed 7% return on their investment and freedom from noise exposure.

A. P. A.

A. P. A.

CC: J. C. P.
D. L. S.
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1576

Exhibit BA-507

Page 1 of 8

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Present Situation

The present maximum level of IFR demand at TEB is approximately 10 to 15 hourly movements. Past discussions with the FAA indicate a maximum potential IFR capacity for TEB at approximately 35 to 40 hourly movements. Under date of November 2, 1965 we were advised in writing by the FAA, as follows:

1577

"Hourly acceptance of Teterboro Airport should be approximately 36 movements per hour when the following conditions are met:

1. Reduced runway occupancy times are realized through an improved taxiway configuration envisioned by airport management.
2. Interaction between Teterboro Runway 6 traffic and LaGuardia traffic utilizing Runway 13 localizer is resolved, or,
3. LaGuardia is approaching via an aid other than the Runway 13 localizer.
4. Newark is approaching via the Runway 4 ILS."

As was previously established by discussions with the FAA, and is confirmed above in writing, the maximum potential IFR capacity for TEB is curtailed by air traffic interaction when Newark is landing aircraft on EWR 22 and/or LaGuardia is landing aircraft on LGA 13. Under present FAA IFR procedures, the impact of such interaction is estimated to be as follows:

1. In the case of TEB landing on runway 6 and EWR landing on runway 22, with LGA simultaneously landing on other than runway 13, it is estimated that TEB IFR capacity will be approximately 24 movements per hour.
2. With TEB landing on runway 6 and LGA landing on runway 13, while EWR is landing on other than runway 22, it is estimated that TEB IFR capacity will be approximately 24 movements per hour.
3. When LGA 13 and EWR 22 are simultaneously utilized for landing approach, TEB IFR capacity will be approximately 12 to 15 movements per hour.

In addition to the above limitations on TEB IFR traffic, but within the framework of the above capacities, TEB presently suffers from subordination to EWR under conditions of peak airspace demand outside of the strict confines of the EWR IFR control zone. This subordination to EWR becomes most critical under the circumstances of peak demand for departing aircraft airspace over an area routing point such as Solberg or Sparta. Under this condition TEB is handled by EWR IFR Control as if TEB were an additional runway at EWR. The practical effect of this condition permits

1578

a number one (1) departure aircraft at TEB to be assigned number sixteen (16) for takeoff, following fifteen (15) aircraft that requested departure clearance from EWR prior to the request made by the TEB aircraft. Simultaneously, EWR is sharing the critical airspace on a one-for-one basis with LGA departing aircraft.

In Progress

In meetings with responsible officials of the FAA, and confirmed in writing to Oscar Bakke, Director-Eastern Region of the FAA, under date of October 27, 1965, the above matters, together with recommendations for improvement, were called to their attention. Mr. Bakke's reply of November 2, 1965, while not wholly responsive, was helpful in several respects. (Copies of that letter exchange are attached for your convenience.) The Bakke letter did confirm, in writing, TEB IFR capacity of approximately 36 movements per hour under certain stated conditions and confirmed previous verbal advice that the FAA has under study procedural changes for the elimination of interaction between IFR traffic at TEB and LGA when LGA is landing aircraft on runway 13. Further, this letter confirms landing minima of 200-1/2 for reciprocating aircraft and 300-1/2 for turbo-jet aircraft, and take-off minima of 300-1 for two engines or less and 200-1/2 for aircraft with more than two engines; all subject to conditions now incorporated in the 6-24 runway extension plan.

Proposed Action

The undersigned will continue to work with the FAA for elimination of, or improvement on, the problems set forth in the October 27, 1965 letter to Mr. Bakke. The success of such effort, however, in my opinion, is entirely dependent upon top FAA policy view on the importance of Teterboro to total New York metropolitan air traffic. The effect of the PNIA position on this matter, or the true PNIA position as a matter of fact, is unknown.

In light of the above, and in recognition of the fact that Teterboro can be developed as an effective airport only with an acceptable standard of total air traffic flow, the following is suggested for your consideration:

A top level PAA/FAA meeting in which we would seek to obtain,

- (a) commitment for the development of procedures which will insure orderly IFR air traffic flow within the framework of approximately 40 hourly movements, under all conditions of area traffic, at the present state the art, and,

(b) assurance, or at least understanding of the situation, that such FAA commitment could not be disturbed by adverse reaction on the part of the FLYA, and,

1579

(c) assurance of FAA cooperative assistance in the long range improvement of procedures, NAVARDS (on and off the airport property), and other airport facilities, consistent with the state of the art and the maintenance of the Teterboro airport position relative to the major New York area airports.

In view of all the foregoing, it is apparent that if any definitive action is to be taken on our part to firm up any changes in the expected level of IFR traffic for Teterboro in the future, the time to take such action is now--before we conclude a final agreement with the Port of New York Authority.

Your views will be appreciated.

O.J.S.

OJS:jl
Attachment

1580

FEDERAL AVIATION AGENCY
NEW YORK AREA OFFICE
Hangar 11
John F. Kennedy International Airport
Jamaica, New York 11430

NOV 29 1965

IN REPLY
REFER TO NYC-1

Captain O. J. Studeman
General Manager
Teterboro Airport Division
Pan American World Airways
Pan Am Building
New York, New York 10017

Dear Captain Studeman:

Your letter dated October 27, 1965, to Mr. Oscar Bakke, Director, Eastern Region, concerning Teterboro air traffic has been referred to this office.

We do not agree that Teterboro traffic is subordinated to Newark. As we stated at our meeting with the NBAA on September 29, 1965, which you attended, we make every effort to blend Teterboro departures equitably on a first come, first served basis with the other airports involved. Newark's departure traffic is also handled with respect to all airports within the boundaries of the airspace concerned.

As you know, we are not speaking simply of Newark and Teterboro. The boundaries of the airspace encompass Linden, Morristown, Caldwell, Totowa-Wayne, Solberg-Hunterdon, Somerset, Kupper, Princeton and Hadley Airports as well. The geographical locations of these airports dictate that the air traffic generated by each be conducted from a single approach control facility. It would be chaotic to establish a separate approach control at any of these airports since sufficient airspace for such an operation does not exist. A concept of even two approach control facilities would require the establishment of additional holding pattern areas as well as separate arrival and departure routes; requirements that cannot be satisfactorily met because of the locations of the airports indicated above. Furthermore, even if the locations of these airports were less critical, from an air traffic control standpoint, the great increase of coordination that would result from this concept would seriously derogate the efficiency of the air traffic control system.

1581

This is not intended to imply that we have capitulated to the complexity. We are presently arranging for a dynamic simulation at NAFEC of the procedures developed by the New York Metroplex Working Group. The simulation will include an evaluation of a Common IFR Room concept to serve the greater New York Area. Hopefully, we believe that any resultant improvements should have a favorable effect upon the future traffic situation at Teterboro Airport. Additionally, we are analyzing the New York Center operations with a view towards developing new methods leading to increased capacity.

The lack of radar coverage below 1,000 feet in reality has little effect on Teterboro's operation and the provision of coverage would cost more than it would be worth.

Arrival traffic into Teterboro is not being discriminated against. It is mandatory that a "slot" be made by LaGuardia Approach Control for Teterboro arrivals and this is being done as efficiently as possible. Naturally, the Teterboro traffic from Rocky Hill and Budd Lake holding patterns must be handled with respect to Newark's traffic. However, because Newark utilizes radar, Teterboro arrivals are vectored a large percentage of time independently of Newark's arrivals.

As you must know, on numerous occasions departures from Teterboro and other satellite airports are released without delay even when there are delays at Newark Airport. This is possible under certain conditions when a controller is able to route traffic via a direction which has not been restricted to time or en trail separation. Additionally, when a departure at Teterboro is to proceed via a route different than that for which other traffic is awaiting clearance, the Teterboro departure will be released with reference to restrictions for that route only. For example, there may be six aircraft at Newark awaiting clearance via Solberg and two awaiting clearance via Sparta. If a Teterboro departure via Sparta taxis out, it will become number three to depart via Sparta and not number nine to depart. Also there are occasions when due to the proximity of Teterboro Airport and Sparta, Teterboro depar-

tures are released in advance of their (Sparta) sequence as established by taxi time.

During LaGuardia 13 localizer operation, departures from Teterboro are provided a slot by LaGuardia Approach Control. The penalty for this slot is imposed upon LaGuardia traffic since their arrival rate is reduced by one each time a gap is made for Teterboro traffic. When LaGuardia is using the 13 localizer and Newark is utilizing their Runway 22 ILS, the same type penalty is also imposed on Newark traffic on frequent occasions.

1582

We explained in detail at the September 29, 1965 meeting that it is not possible to set up discrete arrival and departure routes for Teterboro. The available airspace must be shared with Newark and LaGuardia. We are continuing, however, to explore in depth the Teterboro situation. Whether or not we can develop new procedures, etc., that may afford more expeditious movement of traffic at Teterboro is unknown at this time. In the event new significant procedures are developed you will be promptly advised.

SIDs for Teterboro have been developed and are presently being coordinated. They will not relieve the present situation but they will serve to reduce cockpit workload. This is all they are intended to do.

You suggest that both LaGuardia and Newark overfly Teterboro at 2,500 feet or above on final approach. This would require an alternating flow of traffic. Specifically, LaGuardia would permit one arrival over Teterboro and Newark would clear one after LaGuardia's had vacated the airspace. Notwithstanding the tremendous coordination problem which would thereby be introduced, an intolerable situation would result in that the acceptance rate at each airport would be reduced by 50%. The adverse effect upon Teterboro traffic should be obvious.

We are continuing to investigate the possibility of getting Teterboro departures out under Newark and LaGuardia arrivals. A flight check is still to be made but at this time we are not optimistic.

Insofar as the Newark controller capacity is concerned, there appears to be some misunderstanding. You may recall at our meeting with the NBAA we explained that a very pertinent reason for departure delay about which we can do very little is saturation of the en route system during peak periods of operation. It is during these times that restrictions on departures are placed into effect with subsequent build-up in departure delays. This affects all of the terminals. The restrictions are necessary not so much because of controller ability or capacity but rather because of the associated problems, such as frequency congestion, route and fix saturation, restrictions imposed by adjacent centers, etc., and the need for the controller to introduce safeguards to cope effectively with the heavy traffic flow.

With reference to item 5 of your letter, as you are aware the south operation at Teterboro and Newark presents the greatest problem in the expeditious movement of air traffic since there is not sufficient vec-

toring airspace between the Newark Runway 22 LOM and Teterboro Airport to support a stream of arriving high performance aircraft. Newark Approach Control needs and uses the airspace over Teterboro for vectoring when LaGuardia 13 ILS straight-in approaches are not in progress. Altitude separation between arrivals to Newark and Teterboro would not

1583

exist in the final approach area for a Runway 19 approach. Also, departures from Teterboro would have to be alternated with Newark arrivals and for every operation to or from Teterboro, Newark arrivals would be reduced by one operation.

Simply stated, a south operation to Teterboro would so seriously derogate Newark's arrival capability that the entire metropolitan area would be affected. This applies whether or not LaGuardia Runway 13 approaches are in progress.

An operation such as Newark Runway 4 and Teterboro Runway 1 would be very efficient except that Newark must adhere to noise abatement procedures. Departures from Newark's Runway 4 turn right to 060° climbing to 2,000 feet. Under such a requirement there is an immediate closure problem between a Newark departure and a Teterboro arrival to Runway 1.

We have reviewed the functions being performed by the Newark Tower departure positions concerned with Teterboro traffic. As a result, certain modifications in the telephone circuitry have been requested and will be made. These changes will more equitably distribute the associated controllers' workload.

I trust this letter is responsive and hope that it will minimize your doubts concerning Teterboro getting its "fair shake" in its relation to all other metropolitan traffic.

Sincerely yours,


C. B. Walk, Jr.
Manager

1584

Exhibit BA-508
Page 1 of 5

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
SENIOR VICE PRESIDENT

June 13, 1967

RECEIVED


JUN 15 1967

N. E. H.

N. E. HALABY

SUBJECT: Atlantic Aviation's letter on Teterboro,
dated June 8, 1967.

As requested, comments on subject letter from Business
Jets' viewpoint follow below:

- 
- a. Atlantic apparently wants an exclusive agreement to provide services at Teterboro. Since Atlantic is DH 125 and Gulfstream distributor it is easy to visualize where a Falcon owner would be on a priority list for service.
 - b. During the next 20 years there will be more customers than one operator will be able to handle effectively. Besides there is nothing like "necessary" competition to maintain reasonable price levels for the customer.

Recommendations:

Retain present plans to appoint two maintenance/service operators at Teterboro, one of which will be capable of performing major Falcon services.



J. B. T.

cc: O.J.S.

275

1585

ATLANTIC AVIATION CORPORATION

GREATER WILMINGTON AIRPORT BOX 1700 WILMINGTON, DELAWARE 19800 EAST 8-6611

June 8, 1967

RECEIVED

JUN 9 1967

N. E. HALABY.

Mr. Najeeb Halaby
Senior Vice President
Pan American World Airways
Pan Am Building
New York, New York 10017

WILMINGTON
NEW YORK
PHILADELPHIA
BOSTON
BALTIMORE
WASHINGTON, D. C.

Dear Mr. Halaby:

At a meeting in my office on Monday, June 5th Mr. Juan Trippe left with me a memorandum which is an outline of "A Proposal for Fixed Base Operations at Teterboro Airport". Also present at the meeting were Mr. Henry B. duPont and Mr. Stewart Poole, Chairman of our Board. Mr. Trippe suggested I contact you after reviewing the Proposal. Thus this letter. I think it would be advantageous for me to visit with you in the near future to discuss the Teterboro matter. I would like to have Bill Patrick, our V. P. who operates our Teterboro base, accompany me.

I recognize that the memorandum, a copy of which is attached hereto, is merely a summary of a proposed proposal, so to speak, but I would like to make a few suggestions.

Let me first point out that our sole interest in operating a facility on any airport is to provide quality service to General Aviation at a reasonable profit. In order to accomplish that, we must have the right facility, adequate capital, trained people and last, but certainly not least, the opportunity to earn a profit undiluted by unnecessary competition on the same airport. I have heard some conversation about having two major operators open up for business simultaneously on the improved airport. I know of no better way to guarantee poor service to the airplane owners. Perhaps two major companies could profitably operate two minor facilities, but this is not what the airport needs or the airplane owners want. Nor does Atlantic. Nothing contributes so much to the desire to provide better and better service than profits. I would like to discuss this concept with you.

1586

One major operating expense that can naturally affect earnings is facility rent. It is of vital importance that the cost of a facility be commensurate with potential. Too many mistakes have been made in this relationship, to the embarrassment and loss to both the operator and his landlord. Considering that "rent" can be derived from several sources, it would be beneficial for us to review this subject at some length.

One other point relates to the security built into a lease agreement. The operator must be assured that he will be permitted to conduct his business without interruption, for a guaranteed period of time. In this instance, we would need to know the provisions of the agreement between Pan Am and PONYA that might affect or assure this security.

There are many of the typical rights and obligations of all leases that we could discuss and I suggest we arrange to get together at an early date for this purpose. If this meets with your approval, please let me know. I am sure I can arrange my schedule to your convenience.

Sincerely,

ATLANTIC AVIATION CORPORATION

W. E. Richards
W. E. Richards
President

WER:eh
Attachment

cc: H. B. duPont
S. E. Poole
W. L. Patrick

1587

June 1, 1967

A PROPOSAL FOR FIXED-BASE OPERATION AT TETERBORO AIRPORT

1. In accordance with its agreement with the Port Authority, Pan American will arrange a 20-year land lease from the Port Authority to the Fixed-Base Operator at a nominal rent, and will enter into a separate agreement with the Operator for construction of the fixed-base facility and for use thereof.
2. Pan American will design and construct the facility in accordance with plans and specifications agreed upon by Pan American and the Operator, subject to the approval of the Port Authority.
3. The Operator may use the facility for the following purposes:

*Long term agreement
Cancellation*

(a) Storage, maintenance and repair of aircraft, aircraft assemblies, aircraft accessories and aircraft radios (storage of aircraft shall be limited to hangar and/or monthly storage).

(b) Sale of aircraft, aircraft assemblies, aircraft accessories and aircraft radios.

(c) Leasing and chartering of aircraft.

(d) Business and operations office in connection with the operations of the Operator.

(e) Parking of automotive vehicles operated by the officers, employees, invitees and business visitors of the Operator.

(f) Sale of aviation fuel and aircraft lubricating oil and for the delivery of such fuel and lubricants to and into the aircraft; such sales to be restricted to products of suppliers authorized by Pan American to supply such products for sale at Teterboro.

The Operator may also use the premises as a terminal facility for its customers, unless and until such a facility is made available by Pan American for general use.

1588

4(a) The Operator will pay a fixed monthly rent consisting of (i) land rent at the rate of \$5,000 per year per acre, and (ii) (_____ *) times the cost of the facility to amortize the investment in the facility over the 20-year life and provide a (_____ %*) return after taxes on the unamortized investment. For this purpose, the cost of the facility shall include related costs, such as site preparation and utility extension, design and engineering, as well as cost of construction.

(b) The Operator will also pay a percentage rental equal to 5% of gross receipts (other than aircraft and fuel sales) in excess of twenty times the fixed rent per year, .5% of receipts from sale of aircraft, and a gallonage charge of (_____ *)¢ for sale of fuel and lubricants.

(The foregoing paragraph is comparable with current PONYA agreements.)

5. The Operator will be responsible for maintenance and repair and for insurance, including fire and liability insurance. The Operator will also be responsible for securing any necessary permits for its activities.

6. The Operator will undertake to provide a first-class fixed-base operation to meet the requirements of the agreement with the Port Authority, as well as requirements for Federal Airport aid. The agreement will be subject in

all respects to Pan American's agreement with the Port Authority, including termination of the land lease and the operator's agreement in the event of termination of Pan American's agreement.

*Numbers in brackets to be negotiated.

1589

Exhibit BA-509
Page 1 of 4

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
GENERAL MANAGER, METROPOLITAN AIRPORTS DIVISION



THE PORT OF NEW YORK AUTHORITY

111 Eighth Avenue - at 15th Street, New York, N.Y. 10011

Aviation Department

John R. Wiley, Director

Warren C. Cooper, Chief, Aviation Properties Division Telephone (212) 620-7254

September 6, 1967

Captain O. J. Studeman
General Manager
Pan American World Airways, Inc.
200 Park Avenue
New York, New York 10017

Dear Captain Studeman:

Atlantic Aviation, our prime fixed base operator at Teterboro Airport, proposes to undertake the task of resurfacing certain aircraft parking areas within its leasehold and installing new paving which will increase its aircraft parking capacity by approximately forty (40) tie down positions. The work will be accomplished by and at the expense of the tenant at a cost estimated at \$50,000. However, since Atlantic Aviation under its present lease is a month to month holdover, it has requested assurance that it will have an opportunity to recoup its investment.

There is already a shortage of aircraft parking space at the Teterboro Airport, and as you know we are attempting to interest a greater use of the facility by general aviation interests, and therefore, we feel the increased parking capability is needed.

The Port Authority and Pan Am as its successor will benefit directly from Atlantic's use of the new facilities since it pays a percentage of gross receipts rental.

I am enclosing herewith a copy of a letter agreement which recites generally the terms which would be contained in a formal agreement with Atlantic Aviation and ask that you signify your approval of the proposal by signing the duplicate copy of this letter.

APPROVED:

Pan American World Airways, Inc.

Very truly yours,

Warren C. Cooper

1590

August 8, 1967

Mr. Watson E. Richards, President
 Atlantic Aviation Corporation
 Greater Wilmington Airport
 P. O. Box 1709
 Wilmington, Delaware 19899

Dear Rich,

At our meeting of August 1st we discussed certain improvements which would be made by Atlantic Aviation at Teterboro Airport as soon as possible. You would propose to demolish Building 28 and pave all areas from the north ramp of Hanger 3 to the northern perimeter of the ramp area of Hanger 2, and between the western perimeter of your leasehold lines and Taxiway D, except for the westerly half of the Van Dusen leasehold, all subject to the approval of the Port Authority.

Atlantic Aviation would secure the consent of Van Dusen to surrender the easterly half of its leasehold. The surrendered area would be included as part of Atlantic Aviation's Lease AT-136 at a rental rate of 10 cents per square foot per annum. Atlantic would grant a right of ingress and egress to the remaining Van Dusen leasehold for use by aircraft of Van Dusen and its customers.

Atlantic Aviation's Lease AT-136 would be extended on a month to month basis. In the event the Port Authority terminates said lease without cause at any time within 10 years following the completion date of the construction work, it would pay to Atlantic Aviation the unamortized portion of the cost of construction not to exceed \$50,000 based upon a straight line write-off over a period of 10 years running from such completion date. If Atlantic Aviation should terminate the lease in order to relocate into a new facility in connection with a new central terminal area at Teterboro Airport it would be repaid by the Port Authority for the unamortized portion of its investment in the same manner. If Atlantic Aviation should terminate for any other reason, there would be no repayment obligation on the part of the Port Authority.

Port Authority Permit AT-183 would be terminated, and the area covered by Lease AT-136 would be increased by an area bounded by the present north and south boundaries of the space covered by AT-183 and bounded on the west by the westerly boundary of the Lease AT-136 leasehold. The Easterly boundary would be unchanged. The basic fee paid under AT-183 would be added to the basic rent of Lease AT-136.

1591

If you are agreeable to the foregoing, would you please so indicate by signing the duplicate original of this letter and return it to me. We then would be able to recommend these arrangements to our Board of Commissioners for their approval.

Very truly yours,
 Warren C. Cooper

MR:AJ

ACCEPTED AND APPROVED:

Watson E. Richards, President
Atlantic Aviation Corporation

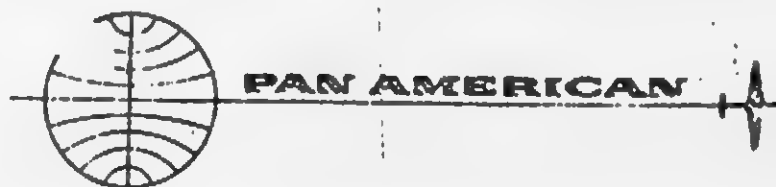
CC: William Patrick

1598

Exhibit BA-513

Page 1 of 4

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
GENERAL MANAGER, METROPOLITAN AIRPORTS DIVISION



from the desk of
O. J. STUDEMAN

June 3, 1966

NOTE TO: Mr. Warren Cooper
PNYA

Regarding our draft of "Rules and Regulations" now being considered for Teterboro, please insert the following as numbered paragraphs 19 and 20 on page 7, renumbering as required:

19. No person shall practice aircraft landings or take-offs at the airport without permission of the airport operator.

20. No aircraft shall land, take-off or taxi at the airport with a student pilot at the controls without the permission of the airport operator.

O. J. Studeman

bcc: Mr. Steege

1599

THE PORT OF NEW YORK AUTHORITY

111 Eighth Avenue - at 15th Street New York NY 10011

AVIATION DEPARTMENT

John R. Wiley
DIRECTORWarren C. Cooper
CHIEF, AVIATION PROPERTIES DIVISIONCharles W. Cronin
ASST. CHIEF, AVIATION PROPERTIES DIVISION

March 22, 1966

Captain O. J. Studeman
200 Park Avenue
New York, New YorkOFFICE OF
MAR 24 1966
O. J. STUDEMAN

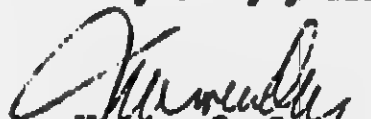
Dear Captain Studeman:

You will recall my mentioning to you a telephone call I had received from a Mr. Markoff, Vice President of the Paramus Flying Club, concerning his Club's interest in leasing unimproved property at Teterboro Airport to be used in connection with their flying activities.

I am forwarding herewith a copy of a letter recently received from Mr. Markoff which sets forth his long use of tie-down space on Atlantic Aviation's premises and the fact that Atlantic, because of their own expansion plans, has requested the Paramus Flying Club to find other accommodations for parking their aircraft within 60 days. Mr. Markoff mentions his Club's immediate expansion plans for additional aircraft and estimates his space requirements as approximately one-third of an acre of unimproved land.

Would you please give me the benefit of your thinking in regard to Mr. Markoff's situation in view of Pan American's pending operation of the airport.

Very truly yours,


Warren C. Cooper

Jacked to Cooper

eh

1600
GRAPHTEX INC.

DELL GLEN AVENUE

• LODI, NEW JERSEY 07644 •

N. J.-201-478-1166

N. Y.-212-563-3444

March 15, 1966

Port of New York Authority
 111 Eight Avenue
 New York, New York

Attention: Mr. Warren C. Cooper
 Chief of Aviation Property
 Room 1405

Dear Mr. Cooper:

This letter will confirm our telephone conversation yesterday relative to Paramus Flying Club, Inc.

We have been at Teterboro Airport in excess of 8 years and for the last several years have rented tie down space through the facility of Atlantic Aviation; because of internal expansion plans, Atlantic Aviation has given us notice and requests that we move our aircraft from their facility. Naturally, with much of our business flying being done by Club members residing in New York City, a move even to the nearest of the more distant airports would seriously endanger our membership. Furthermore, we have immediate expansion plans for additional aircraft to bring our fleet up to 8 or 9.

Since our organization is very well established and wants to continue in this manner operating from Teterboro Airport, we are very interested at this time in leasing unproved property from the Authority and it appears that our space requirements are in the vicinity of 1/3 acre; of course, for aircraft tie down with or without our own hangar, this square footage may be of irregular layout.

1601

As tenants, Port of New York Authority could be assured that space would be operated in a save and progressive manner for our past experience with all personnel at Teterboro Airport over the years has reflected this.

Atlantic Aviation has requested us to move within 60 days and as spokesman for the Club, I would sincerely appreciate your prompt attention to this matter.

Very truly yours,

PARAMUS FLYING CLUB

Jerry Markoff
 Jerry Markoff
 Vice President

JM:J

NOTE: In order to facilitate communication, I am using my company office as indicated on the letterhead above for your convenience in contacting me.

1602

Exhibit BA-514

Page 1 of 2

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
VICE PRESIDENT

November 14, 1966

Note to APA:

An alternative approach for concluding a satisfactory agreement with the PONYA on Teterboro is suggested as follows:

1) Pan American to assume full responsibility for development and operation of the Airport as contemplated in the Letter Agreement of August 6, 1965.

2) Pan American to assume noise liability.

3) Incorporate in present draft agreement a new contract provision which provides Pan American the right of termination, with PONYA reimbursement for the unamortized portion of Pan American's capital investment amortized over the contract term, in accordance with the following:

Pan American shall have the right of termination at any time during the term of the agreement when its cumulated noise costs have reached the following amounts:

\$1,000,000 in the first five years
1,500,000 in the second five years
2,000,000 in the third five years
2,500,000 in the fourth five years
3,000,000 in the fifth five years
3,500,000 in the sixth five years

4) Provide that costs incurred by the PONYA in condemnation of real property associated with the Airport and made a part thereof, shall be capitalized and the annual rental fee increased by 7% of such amount.

1603

It is suggested that the above approach is advantageous to Pan American, as compared to the approach now being considered, as follows:

- a) \$800,000 saving over the contract term on cost of improvements to the public landing area.
- b) \$3,000,000 to \$6,000,000 estimated saving over the contract term in PONYA indirect and overhead expenses in operation and maintenance of the public landing area.
- c) At all times during the contract term, except for the early developmental years, TAMS forecasts accumulated earnings in excess of the suggested level of noise cost termination amounts.
- d) Pan American will maintain control of the level of landing fees and other charges on the Airport.
- e) Pan American, in cooperation with the FAA, will obtain optimum air traffic control procedures for TEB, whereas the PONYA will lack the incentive for improvements that are to any degree detrimental to EWR and LGA, even though such improvements are beneficial to overall metropolitan air traffic capacity.
- f) Pan American will maintain direct control over the limiting of light plane traffic, as will be required for the proper development of the Airport.

cc: JCP

[Handwritten signature]
OJS

1608

Exhibit BA-516
Page 3 of 4

figures exclude any cost of land acquisition.

- (e) It would appear that the full development of Teterboro by the Port of New York Authority would slow down, to some extent, the customer potential at Republic. This, of course, would be affected significantly upwards or downwards by other possible developments

such as:

1. The exclusion or limitation of general aviation traffic to the major commercial airports.
2. The development of other general aviation airports such as Staten Island and Floyd Bennett.
3. The provision of highway connection between Eastern Long Island and Connecticut.

Should Pan American acquire Teterboro from the Port of New York Authority, the additional acquisition of Republic might be advantageous from the standpoint of the Airport Division's overhead expenses, accommodation of overflow business from Teterboro, and the means of entry into a large share of the rapidly growing general aviation business. In time it would appear that both airports would be well-utilized - even to capacity.

(f) As stated above, it is indicated that the full development of Republic

1609

might be expected to proceed at a somewhat slower rate than Teterboro. If, however, other competitive general aviation airports are not developed in the Metropolitan area, the growth of general aviation is such as to argue for early acquisition of Republic.

In view of the relative sizes of Teterboro and Republic and their relative locations, it would seem reasonable to expect that basic annual rental fees would be proportionately less at Republic. Also, it would seem reasonable to expect that a longer term contract could be negotiated on Republic, which would permit us to take full advantage of long-term general aviation growth.

On the basis of our preliminary studies, it is worthwhile to explore fully the possibilities of working out an arrangement at Republic Airport along the general framework of our PONYA proposed contract - hopefully with New York State as the contracting agent. The State of New York has recently publicized its interest in the

development of this Airport for general aviation purposes. A contact with the Metropolitan Commuter Authority of New York State could well clarify further the possibility of serious consideration on our part.

Alvin P. Adams

1625

Exhibit BA-521
Page 1 of 1

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
GENERAL MANAGER, METROPOLITAN AIRPORTS DIVISION

July 29, 1965

NOTE TO: HEG

Port Authority reported revenues at Teterboro for 1964 indicate that at least some \$150,000 to \$200,000 was accrued from small aircraft activity (private and school). While our planning will be for increase in business aircraft activity, the rate and extent of diminishing the small aircraft activity can bear importantly on total revenues, particularly in the early years.

To insure optimum handling of the desired business aircraft traffic, and at the same time preserve a position of optimum revenues, might it not be wise to consider the feasibility of constructing a 2500 x 30 foot small aircraft landing strip parallel to the present runway 6-24? Such a strip, if considered, would be unlighted, should not interfere with the airport development plan and should permit simultaneous non-interfering, VFR traffic flow. Perhaps the clear zones required for approach to runways 1 and 32 could be used for this purpose.

RECEIVED BY
O. J. SUTHERLAND

OJS

1626

HEG

June 4, 1965

CONFIDENTIAL

Further regarding Teterboro, analysis of costs and potential revenues indicates that this facility can be profitable on a long-term basis assuming conclusion of satisfactory lease terms with PNYA and providing that the airport be made operationally effective. On this latter point, operational effectiveness, the following questions arise:

- (1) Can procedures which will insure reasonably unrestricted flight traffic flow, under both visual and instrument conditions,

be established and maintained?

(2) While it appears that 6500 feet of runway will be adequate for general aviation operation, and that such runway extension can be achieved, is the present instrument runway directional orientation such as to satisfy (1) above?

(3) Recognizing that the larger corporate aircraft which we would seek to attract will require facilities providing ceiling and visibility limitations comparable to the major metropolitan airports, can we be assured of the necessary FAA participation to achieve that result?

I assume that some discussions have been held with the FAA on the Teterboro matter. Would it be appropriate that the above-listed points be explored with the FAA in the immediate future?

ORIGINAL SIGNED BY:
O. J. STUBBS

OJS

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Exhibit BA-523
Page 1 of 1

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
GENERAL MANAGER, METROPOLITAN AIRPORTS DIVISION

NOTE TO: A.P.A.

9-27-67

As a matter of interest I received telephone calls yesterday from Jack Wilson from Champion Paper Company and Fred Landon of Volkswagon, both whom asked to get their names on the list for space at Teterboro. Each of the above indicated a desire for exclusive hangar space but indicated planning for only one aircraft each. Champion Paper now has a D71125 based with Newark air service and Volkswagon has a Sabreline now kept in the Atlantic Aviation hangar at Teterboro.

Based upon the above, it appears probable that we will have to consider lease arrangements where by two or more tenants share a single hangar unit.

O. J. S.

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Exhibit BA-525
Page 1 of 1

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
GENERAL MANAGER, METROPOLITAN AIRPORTS DIVISION

9-26-67

NOTE TO: A.P.A.

SUBJECT: STANDARD OIL OF NEW JERSEY

REFERENCE: Your note of September 12 to N.E.H.

Having reviewed the above reference note, it has occurred to me that the only real question involved in accommodating Standard Oil of New Jersey on a site adjacent to National Distillers is the deviation from our planning for the initial development of the South area. Assuming that decision was made to enter into a deal with Standard for an area adjoining National Distillers, we would still have the option of permitting Standard to finance the construction or construct with PAA funds to specifications agreed upon with Standard. Tom Bilzi has made additional studies on this matter and it is indicated that it would be financially advantageous to construct for Standard with PAA funds provided, of course, that financial arrangements produced an acceptable return on investment.

Based on the above, I would suggest that the only decision involved is whether or not we are agreeable to permitting Standard to locate immediately south of the National Distiller facilities. Given an affirmative decision, we can proceed immediately with coordination with the Port Authority and negotiation with Standard.

O.J.S.

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Exhibit BA-527

Page 2 of 3

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
GENERAL MANAGER, METROPOLITAN AIRPORTS DIVISION

MEMORANDUM

Warren C. Cooper

Merle Cobb

September 11, 1967

TETERBORO AIRPORT - PROSPECTIVE TENANT

Mr. Donald Smith, President of Aircraft Support Equipment Corporation, Rockaway Boulevard, L. I., New York dropped by this morning to speak to you about the possibility of leasing space at Teterboro Airport. He was accompanied by Mr. Arthur Tucker, President of Dalco Electronics Corporation of Newark, New Jersey (telephone # 526-1400). Aircraft Support is a wholly owned subsidiary of Dalco Electronics.

Aircraft Support manufactures mechanical equipment such as

self-propelled baggage handling equipment which is used at Kennedy International Airport.

Dalto Electronics manufactures electronic equipment such as flight simulators. Mr. Tucker stated that they have a contract to construct a flight simulator for the CSA, and that they are about to close deals with TWA, Eastern and American Airlines for the construction of flight simulators for these airlines. He said that they have been negotiating with Pan Am for a similar installation.

Dalto would like to lease an area sufficient in size on which it would construct a hangar type building such as one manufactured by either Butler or Strand Steel Companies of approximately 60 by 120 by 24' in height in dimensions. The hangar would be used for the final assembly, testing and calibrating of aircraft flight simulators, and where the simulators would undergo evaluation and acceptance by Dalto customers.

Mr. Tucker said that they recently constructed a facility such as this at the Spring Valley Airport but that they needed an air field such as Teterboro, which provides all weather conditions and has runways of sufficient length to accommodate larger aircraft.

I informed Messrs. Smith and Tucker that I would discuss their proposal with you and that they could anticipate hearing from us in the near future. They are aware of the PA-Zen Am negotiations and their purpose in coming in at this time was to "get ahead of the rush". Incidentally, while here and looking at the Teterboro map, they indicated that the area occupied by National Distillers and Bendix would be a good

1634

location for their facility but they understood that the Port Authority may have other designs on this area in view of our "runway expansion program". They mentioned that they attempted to lease the triangular strip along Industrial Avenue outside of the airport and located within Hasbrouck Heights, but that their dealings with the owner, "a judge in Hasbrouck Heights", fell through because he was asking a phenomenal price, and of course their knowledge that they might not even be permitted access to the airport after building there.

Marie Robb

Aviation Properties Division

NR:AJ

1636

Exhibit BA-529
Page 1 of 4DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
SENIOR VICE PRESIDENT

DEAN WITTER & Co.

SAN FRANCISCO
SEATTLE
PORTLAND
OAKLAND
SACRAMENTO
HONOLULU
PHILADELPHIAMEMBERS
NEW YORK STOCK EXCHANGE PACIFIC COAST STOCK EXCHANGE
AND OTHER LEADING STOCK & COMMODITY EXCHANGESLOS ANGELES
BEVERLY HILLS
SAN MARINO
SAN DIEGO
FRESNO
CHICAGO
BOSTON14 WALL STREET
NEW YORK, N.Y. 10005

DICKY 4-3100

December 31, 1965

NEH

Mr. Jaun T. Trippe
Pan American World Airways
Pan American Building
200 Park Avenue
New York, N.Y.

Dear Mr. Trippe:

As a private pilot, based at Teterboro, I view the
coming on Pan American in hope mingled with trepidation.

WHY?

Because, at present, outside tie-down monthly costs are \$35.00 a month. In addition, the Port of New York Authority charges \$10.00 a month for landing fees, or \$1.50 per landing. This is the minimum fee for smallest planes.

The average pilot flies only 100 hours a year, and this works out to \$4.50 per hour just for sitting on the ground.

To discourage the little guy, and add a few hundred thousand dollars revenue to your \$600,000,000 plus annual, these rates could well continue. Since a goodly portion of aircraft based at Teterboro are "business aircraft", you could well double the rates and cause little dissatisfaction.

On the other hand, Teterboro is the last remaining airport in reasonable proximity to the largest city in the world which still offers reasonable facilities at less than outlandish costs to the private pilot.

1637

Kennedy, La Guardia, and Floyd Bennett are non-existent in our minds.

Caldwell, Spring Valley and Zahns are too far out.

Flushing Airport is privately held, under a rather unfriendly operator, and with poor transportation. I know people who drive to Zahns, rather than use this field.

CONCLUSION:

Perhaps Pan American could be the first to initiate some pro-private pilot good will via a revision of landing field and tie-down rates. A lot of your budget goes for good will and advertising. The good will in this area which would certainly be well publicized in flying, AOPA magazines, etc., may well reap benefits across the country.

Sincerely,



Robert L. Foster

RLF/sect

1638

February 15, 1966

Mr. Robert L. Foster
Dean Witter & Co.
14 Wall Street
New York, N. Y. 10005

Dear Mr. Foster:

Mr. Trippe has given me your letter of December 31 about Teterboro fees and I feel that you are entitled to our views.

You have clearly stated the problem for the individual private pilot - "the little guy". We have great sympathy for him and are anxious to solve the general aviation airport problem in a practical, equitable way.

As a tenant you know that Teterboro has not received as much attention and improvement as other important metropolitan airports. You know also that it was in danger of abandonment until PAA stepped in

seeking a sensible basis for continuing this regional asset to aviation and the public in general.

We are preparing a program for assuring greater safety, convenience, and operational efficiency of the airport. It is necessarily a cooperative program with the Port of New York Authority, the Federal Aviation Agency, local and state officials, the present and prospective tenants and users of Teterboro, and the general public.

Since you are in an investment house you will appreciate that as a publicly held, Federally regulated organization Pan American is responsible to its stockholders and the Government for what it is doing.

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It is not a foundation for general aviation but a profitable, private enterprise and, of course, we intend to keep it so. The big question for us is whether it will be possible to maintain the airport as a public airport, improve its operational safety and efficiency, and add conveniences for the users without substantial increase in fees to be charged those benefiting from it.

As you suggest, we are anxious to conduct the operation in a manner that will yield the most "goodwill" from the aviation community as well as the general public.

We certainly do not expect a return on this public investment such as we would plan to make on our airline or hotel operations.

In summary then, we are seeking to work out an arrangement with the Port Authority whereby Teterboro will not be lost to private aviation but will be maintained and improved. We cannot do so at a deficit nor can we be satisfied with the present condition of the field. We will therefore make every effort to maintain and improve it at the least cost and to pass the costs on equitably to the users. We expect some time during the coming year to publish a schedule of fees and they will not be out of line with fees charged for comparable services in this region.

Sincerely yours,
N. E. Halaby.

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Exhibit BA-530
Page 2 of 6

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
VICE PRESIDENT

Republic Airport does not now impose any landing fee charge. This practice has probably favorably influenced the influx of privately-owned aircraft

and the expansion of the number of based aircraft (now in excess of 100) which utilize storage, fuel and other available services. It would appear that, in balance, the overall economic result might well favor the continuance of a no-landing-fee policy until such time as public ownership is achieved and a long-term development

1642

program initiated. Such a policy would avoid the rather expensive staffing for landing-fee collection during all hours of operation.

* * *

1643DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
VICE PRESIDENTTETERBORO AIRPORT

SCHEDULE OF CHARGES

For the Use of

The Public Landing Area

The operators of any aircraft using the public landing area at Teterboro Airport, except pursuant to the terms of a lease with The Port of New York Authority or the Airport Operator, shall pay for such use at the rate set forth herein.

I. PUBLIC LANDING AREA CHARGES

1. For each take-off of aircraft not exceeding 2,500 pounds of maximum gross weight for take-off \$2.00

Operators of aircraft of this weight class may elect to pay a fee of \$15.00 per month per aircraft for unlimited use of the public landing area in lieu of the charge provided above.

2. For each take-off of aircraft exceeding 2,500 pounds but not exceeding 7,500 pounds of maximum gross weight for take-off \$3.00

Operators of aircraft of this weight class may elect to pay a fee of \$22.50 per month per aircraft for unlimited use of the public landing area in lieu of the charge provided above.

3. For each take-off of aircraft exceeding 7,500 pounds: \$.025 per one hundred pounds of maximum gross weight for take-off, provided that the minimum charge for each such take-off shall be \$3.50

4. Maximum gross weight for take-off shall mean the maximum gross weight which an aircraft may lawfully have, at the time of leaving the ground at any airport in the United States (under the most favorable conditions which may exist at such airport and without regard to special limiting factors arising out of the particular time, place or circumstances of the particular take-off, such as runway length, air temperature, or the like). If such maximum gross weight is not fixed

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5. Such charges shall not be payable in connection with the following:
- a. Test flights which originate and terminate at the Airport, provided:
 - (1) The repairs and/or work under test have been performed by an Airport Operator permittee at the Airport;
 - (2) No intermediate landings take place at other airports; and
 - (3) Not more than two hours elapse between the time an aircraft is duly authenticated for the test flight by the Airport Operator permittee performing the repairs and/or work and the time the aircraft returns to the Airport.
 - b. In the event an aircraft departs from the Airport for another destination, which aircraft, without making a stop at another airport, is forced to return to and land at the Airport because of meteorological conditions, mechanical or operating causes or for any similar emergency or precautionary reason, such charge shall not be payable in connection with the subsequent departure of such aircraft or a substituted aircraft; provided, however, that on such subsequent departure the aircraft or substituted aircraft is

destined for the same point and transports the same or substantially the same load.

II FREE USE OF PUBLIC LANDING AREA

Notwithstanding the provisions of any Schedule of Charges heretofore adopted for the use of Teterboro Airport, no charge shall be made for the use of such areas at the Airport by the following aircraft:

1. Aircraft operated by the Federal Aviation Agency or the Civil Aeronautics Board.
2. Aircraft owned by the State of New York or the State of New Jersey or City of New York, or the City of Newark.
3. Aircraft operated by the United States Coast Guard when engaged in the execution of search and rescue and law enforcement duties.
4. Aircraft owned or chartered by the Port of New York Authority.

1645

officially ordered practice aircraft search and rescue missions.

III. CREDIT ARRANGEMENTS AND MONTHLY REPORTS

All charges under this Schedule of Charges shall be payable in cash as they are incurred unless credit arrangements satisfactory to the Airport Operator have been made in advance.

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Exhibit BA-533
Page 1 of 4

DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
SENIOR VICE PRESIDENT

March 31, 1967

NOTE TO: , N. E. H.

SUBJECT: Commercial Entry Into the Field of Airport Design and Development.

I. It is considered commercially feasible for Pan American to expand its present scope of activities to include further entry into the field of airport design and development. Such entry could complement the present effort to provide required facilities for high-performance, high-capacity aircraft now on order and simultaneously assist in the furtherance of broader Company aims.

Discussions with our Properties and Facilities organization, our Technical Assistance organization and the Engineering and Architectural firm Tippetts, Abbott, McCarthy and Stratton, indicate a sufficient commercial potential to support an affirmative decision for further commercial entry into this field. Specific examples of past commercial opportunity were reviewed with our Technical Assistance organization and with TAMS. In one recent case TAP entered into a contract with USAID for a survey and plan for development of airports in the Republic of Guinea, which contract was subcontracted to and satisfactorily performed by TAMS. In another, larger project in Morocco both organizations performed nominal services under USAID contract and it is TAMS view that major work could have been performed had a working relationship then been established between our companies.

1650

(2)

II. In establishing company organization for the accommodation of this expanded activity it should be recognized that there will be a continuing major dependence upon the airline organization for key personnel, technical guidance in the appli-

cation of the state of the art to a particular project, and the services of our world-wide organization in the development of business opportunities.

The airline organization is now and has always been deeply involved in airport and airport facilities development. Historically, our requirements have been satisfied by the application of company influence (financial, political, technical, and/or such other means as may be available) at geographic points where new or improved facilities are indicated for the orderly development of air transportation. Thus far, while not without problems, this approach has been successful and is being utilized at the present time in the airline organization in preparation for the advent of new high-performance aircraft.

Discussions with members of the Technical Assistance organization established their periodic entry into the airport problem. In addition to the two examples cited above, the TAP team now in Indonesia includes an Airport Engineer, from Properties and Facilities, whose function is to survey and recommend improvements to airports in that country. The Technical Assistance organization was created for the purpose

1651

(3)

of selling Pan American services, and in the process furthering the Company's broader business aims by the establishment of valuable working relationships with our government and with foreign governments.

III. Further entry into the field of airport design and development could be most economically and effectively accommodated by relatively minor expansion of an element of present company organization, and by association with a reputable engineering and architectural firm with substantial domestic and foreign experience.

Relatively minor staff expansion of either our Properties and Facilities organization or our Technical Assistance organization could provide the means to "staff" this added effort, coordinating with appropriate elements of the airline organization for sales, technical guidance and assistance as required. In view of the extensive airline demands imposed on Properties and Facilities and in recognition of the nature of the work now performed by Technical Assistance, and the valuable U. S. and foreign governmental relationships which have been developed in the course of its work, it is recommended that Technical Assistance could more logically assume this added responsibility.

IV. Based upon our well established relationship with Tippetts, Abbott, McCarthy and Stratton, and particularly in view of their strong expressed interest in associating with us in this effort, it is recommended that affiliation with that firm would be beneficial to Pan American.

1652

(4)

In this regard it is interesting to note that TAMS would participate only to the extent of the usual sale of its services, its

policy for the protection of its professional standing precluding any form of participation in additional profit.

In summary, it is recommended that this additional activity should be undertaken, that maximum effectiveness at minimum risk (at most \$50,000 to \$100,000 per year) would be achieved by relatively nominal expansion of our present Technical Assistance organization, and that an affiliation with Tippetts, Abbott, McCarthy and Stratton would assure the services of a highly reputable, experienced, and enthusiastically interested Engineering and Architectural firm.

O.J.S.

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Exhibit BA-537 DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
Page 1 of 7 SENIOR VICE PRESIDENT, OPERATIONS

THE PORT OF NEW YORK AUTHORITY

TETERBORO AIRPORT

CAREY BUS PATRON SURVEY

OCTOBER - NOVEMBER 1967

Attached are tables compiled from the recent Carey Bus Survey at Teterboro. The checking began on Monday, October 30th and was conducted on every weekday through Friday, November 24th. All passengers on buses departing from 10:00 a.m. through 6:30 p.m. were approached by our checker. During this period a total of 243 patrons used the service. Because our checking was done in the form of a personal interview, the response rate was high, 88 per cent. Approximately 67 per cent of the returns were from patrons arriving at the airport via a general aviation aircraft.

Because of the urgent need for the collected information, the questionnaires were hand tabulated. The first two tables show tabulations compiled from all replies to questions 2 and 9, and the remaining tables were computed only from respondents arriving at Teterboro by air.

ARRIVAL MODE OF ALL PASSENGERS AT TETERBORO AIRPORT

Air Taxi	0.5
Company Aircraft	35.0
Private Aircraft	32.0
Carey Bus*	16.5
Private Auto*	12.0
Other (Taxi and Bus)*	<u>4.0</u>
	100.0%

* Represents passengers who originated their trips in the Metropolitan Area. These passengers came to Teterboro primarily for flight instruction or business at the airport.

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DOCUMENTS FROM THE FILES OF PAN AMERICAN'S
SENIOR VICE PRESIDENT, OPERATIONS

RESIDENCE OF ALL CAREY BUS PATRONS

<u>New York</u>	
New York City	24.0
Other New York State	<u>19.6</u>
TOTAL NEW YORK	43.6
<u>New Jersey</u>	5.4
<u>Connecticut</u>	3.9
<u>Other New England</u>	8.8
<u>Pennsylvania</u>	6.9
<u>Maryland, Delaware, Wash. D.C., Virginia</u>	10.3
<u>All Other</u>	<u>21.1</u>
	100.0%

DESTINATION OF PASSENGERS ARRIVING AT TETERBORO BY AIR:

<u>New York</u>	<u>%</u>
Manhattan	
Battery-Houston Street	10.2
Houston-34th Street	8.0
34th-59th Street	67.2
59th and above	8.8
TOTAL MANHATTAN	94.2
Other New York City	0.7
John F. Kennedy International Airport	0.7
LaGuardia Airport	1.5
Other New York State	0.7
<u>New Jersey</u>	1.5
<u>Connecticut</u>	<u>0.7</u>
TOTAL	100.0

1670

DID YOU KNOW ABOUT THE CAREY COACH SERVICE TO MANHATTAN BEFORE TODAY?

Yes	60.1%
No	<u>39.9</u>
	100.0%

Of those who had prior knowledge the source was:

	<u>%</u>
Butler & Atlantic Aviation	16.2
Newspapers	5.0
Own Company, Circular & Memos	16.3
Word of Mouth	27.5
Aviation Week & Other Mag.	30.0
Pilot	10.0
Other	<u>5.0</u>
	100.0

Suggestions as How to Publicize the Carey Service:

Radio	Butler Aviation
Travel Agents	Posters at Airports
Aviation Magazines	Memo to General Aviation Owners
Signs at Airport	

RATING OF SERVICE

	<u>Very Good</u>	<u>Good</u>	<u>Accept- able</u>	<u>Poor</u>	<u>Total</u>
Frequency of Service/Wait for Flight	67.4	29.6	3.0		100.0
Convenience of West Side Terminal to Final Destination	41.7	39.4	17.4	1.5	100.0
Coach Trip Time	57.7	36.6	5.7		100.0
Economy/Fare	55.7	32.8	11.5		100.0

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WAITING TIME FOR CAREY COACH

<u>Minutes</u>	<u>Z</u>
1-5	30.2
6-10	25.2
11-15	11.5
16-20	13.7
More than 20	12.2
No Wait	<u>7.2</u>
	100.0

SUGGESTION FOR IMPROVEMENT OF SERVICE

Approximately 62% of the riders did not respond, another 23% thought the service was already good, the remaining 15% had among other the following suggestions:

More attractive or better waiting room

Extended service into the night hours

Usage of smaller vehicle

Insuring connections with cross-town shuttle service

Centralizing New York Terminal

Direct service to LaGuardia

Heating of buses

Increased frequency of trips

More signs

More convenient luggage area in bus

PERCENTAGE DISTRIBUTION OF PATRONS EXPECTING TO USE SERVICE ON NEXT TRIP

	<u>%</u>
Yes	89.8
No	0.7
Don't Know	<u>9.5</u>
	100.0

1672

DO YOU BELIEVE THIS SERVICE SHOULD BE CONTINUED?

Yes	98.5%
No	<u>1.5</u>
	100.0%

Comments following this question were as follows:

"Makes Teterboro perfect for destination N.Y.C."

"I'll need it"

"We changed from LaGuardia when it was started"

"Will use Teterboro instead of Newark"

"Great step forward"

"Wouldn't use Teterboro except for Carey"

"Probably won't even go to LaGuardia again"

"May take awhile to catch on"

"Better parking for plane"

"Bus interior should be cleaned"

"Will keep private craft like mine from using major facilities"

"Excellent idea"

"Ideal - cab too expensive"

FROM WHICH CITY/TOWN DID YOU DEPART FOR TETERBORO?

<u>Origin</u>	<u>%</u>
<u>New York</u>	30.4
<u>New Jersey</u>	0.7
<u>Connecticut</u>	3.0
<u>Other New England</u>	14.8
<u>Pennsylvania</u>	9.6
<u>Maryland, Delaware, Wash. D.C., Virginia</u>	15.6
<u>Other States</u>	<u>25.9</u>
TOTAL	100.0

1673

REASON FOR COMING TO TETERBORO

	<u>%</u>
Business	75.7
Pleasure	22.1
Other	<u>2.2</u>
TOTAL	100.0

TIME OF ARRIVAL AT TETERBORO

<u>Time Period</u>	<u>%</u>
8:30-8:59 AM	1.5
9:00-9:59	13.3
10:00-10:59	19.3
11:00-11:59	15.6
12:00-12:59 PM	11.1
1:00-1:59	2.2

	306
2:00-2:59	5.2
3:00-3:59	8.1
4:00-4:59	12.6
5:00-5:59	10.4
6:00-6:29	<u>0.7</u>
	100.0

REASON FOR CHOOSING TETERBORO

	<u>%</u>
Dual Answers - "Closest to final Dest." and "Wished to avoid 3 major airports"	19.0
Closest to Final Dest.	10.2
Business at Airport	5.1
Aircraft Based at Teterboro	4.4
Wished to Avoid JFK/LaGuardia and Newark	38.7
Other	<u>22.6</u>
	100.0

1674

DID THIS SERVICE IN ANYWAY INFLUENCE YOUR DECISION TO USE TETERBORO?

	<u>%</u>
Yes	48.9
No	<u>51.1</u>
	100.0

FIRST CHOICE FOR ALTERNATE AIRPORT

	<u>%</u>
LaGuardia	51.5
John F. Kennedy International	2.3
Mac Arthur	0.8
Flushing	8.5
West.	1.5

Newark	24.6
Linden	2.3
Had no say in choice	6.2
Would not have made trip	<u>2.3</u>
	100.0

NUMBER OF LANDINGS IN SCHEDULED AIRLINE IN PAST 12 MONTHS

	Landing Airport		
	<u>JFK</u>	<u>NWK</u>	<u>LAG</u>
Less Than 5	14.6%	15.2%	15.9%
More Than 5	8.0	5.8	12.3
None	<u>77.4</u>	<u>79.0</u>	<u>71.8</u>
	100.0%	100.0%	100.0%

Number of General Aviation Landings in Past 12 months

	Landing Airport			
	<u>Teterboro</u>	<u>JFK</u>	<u>NWK</u>	<u>LAG</u>
One	59.1%	2.2%	2.2%	3.0%
2-5	16.8	10.4	10.4	12.7
More Than 5	24.1	7.5	12.7	28.3
None	<u>100.0%</u>	<u>79.9</u>	<u>74.7</u>	<u>56.0</u>
	100.0%	100.0%	100.0%	100.0%

Docket No. 19045
Exhibit BA-540

1687

March 25, 1968

STIPULATION OF THE PARTIES

1. On the first page of the letter from Mr. Austin J. Tobin, Executive Director of the Port of New York Authority to Mr. Juan Trippe, dated September 2, 1966, which is set forth in Exhibit BA-502, there is a note written by Mr. Trippe which reads:

"Phone A letter difficult to read, possibly an 'M' on 9/7 - no release by either side pending an effort to work out a large scale effort - Studdeman and Warren Cooper - this wk. - for inclusion in deal."

2. The following changes were made in the Pro Forma Draft of

Release for Consideration by Pan American and Port Authority set forth in Exhibit BA-502, p. 3:

- a. On line 6, the words "airline aircraft" are set forth in square brackets and the words "an airline terminal and business aviation" are written in above.
- b. On the third line from the bottom on the page, the words "one of" are set forth in square brackets and square brackets are set forth around the "s" in the word tenants, thus making the sentence read "A lease under which Pan American would become Teterboro's major tenant is now under discussion. "

Exhibit BA-541
Page 1 of 3

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"FOREWARD" SECTION OF THE PAN AMERICAN "BLUE BOOK"

FOREWORD

For many years Pan American World Airways has played an active and constructive part in the development of General Aviation. The Company's interest in effect dates back to 1945 when it acquired 16 war surplus B-23 aircraft and converted, licensed and sold them to corporations under whose operation they have compiled an outstanding record of safety and dependability.

Several years ago, at the request of a number of corporations, interested in modernizing their aircraft fleets with turbo-jet equipment, Pan American conducted engineering studies, evaluations and flight tests on several of the more prominent modern aircraft under development for the corporate market. As a result of these analyses, Pan American concluded that its resources and technical personnel could make a valuable contribution to "business aviation" by assisting a manufacturer in the development of an aircraft designed to fit the exacting requirements of the corporate

operator, and by assisting the owner in establishing an advanced training, operating and world-wide service program.

Pan American formed a separate division of the company, known as the "Business Jets Division" to carry out this far-sighted project. The exhaustive studies which the company had made indicated clearly that the Fan-Jet Falcon manufactured by the Generale Aeronautique Marcel Dassault

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Company of France and powered by General Electric CF700-2C engines met well the requirements of the business market and, as a result it acquired approximately 60 such aircraft, plus options on 100 additional units.

These long-established relations in business aviation have made Pan American - along with other operators in the New York Metropolitan area - acutely aware of the ever-increasing airport traffic saturation problem. Further, with the inauguration of DC-9, B-737 and BAC 111 service into LaGuardia, Newark and Kennedy Airports, this condition will be further aggravated. And, unless some relief is afforded, General Aviation's activities in this all-important area could be severely restricted.

Detailed analysis of the problem has made it abundantly clear that the Teterboro Airport, located some 12 miles from midtown Manhattan (8.2 air miles) in Bergen County, New Jersey, presents about the sole solution. However, it is equally clear that, to meet this challenge, the airport must be overhauled, expanded, modernized and provided attractive and useful facilities designed especially to take care of General Aviation requirements. Such a program for Teterboro, however, requires "know-how" of the industry operating problems, and the management and financial capacity to effect the required betterments. Last but not least, essential ingredients for success require enthusiasm for the enterprise and confidence

in the industry's future and in the project. Pan American believes that it is

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well-qualified to undertake this important and far-reaching development.

With this objective, Pan American entered into negotiations with the Port of New York Authority under which it would assume operating responsibilities of Teterboro Airport for a 30-year period. Such negotiations have recently been concluded. A major expansion and improvement program for the airport is already under way. The responsibility of the successful conduct of this project has been assigned to a separate division of the company, known as the "Teterboro Airport Division".

Exhibit BA-542
Page 1 of 1

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EXCERPT FROM "LANDING FEES" SECTION OF "BLUE BOOK"

F. Teterboro (Proposed Landing Fees)

Effective March 1, 1966 (or such date as Pan Am's lease becomes effective - assumes 6-24 runway extension):

(a) For each take-off of aircraft not exceeding maximum take-off gross weight of 2500 lbs. a landing fee of \$3.00 (no "touch and go" training operations to be permitted).

(b) For each take-off of aircraft with a maximum take-off gross weight of over 2500 lbs. but not exceeding 7500 lbs. a landing fee of \$4.00 (no "touch and go" training operations to be permitted).

(c) For each take-off of aircraft with a maximum take-off gross weight of over 7500 lbs. - 36¢ per thousand lbs. - minimum fee \$5.00.

(d) Eliminate free test flights.

These fees should be increased after completion of 1-19 runway extension and the Pan Am Terminal.

II PUBLIC RAMP AND APRON AREA - Current Fees in Effect

A. Kennedy

1. For an aircraft remaining on the public passenger ramp and apron area adjacent to the Temporary Terminal Building



for more than 10 minutes after the Manager of the Air Terminal has directed that such aircraft be removed because of congestion of aircraft upon the said area, the urgency for making space available for other aircraft, snow removal, or other operational requirements, which said notice shall not in any event be given until the aircraft has been on such area for 45 minutes:

For each additional 30 minutes or fraction thereof.\$5.00

2. For an aircraft remaining on the public passenger ramp and apron area adjacent to the International Arrival Building for more than 10 minutes after the Manager of the Air Terminal

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FEDERAL AVIATION AGENCY AIRPORT FACILITIES RECORD

FORM AVF-600 (REV. 1-60)

NYC-600

1739

STATE: New York, New York		AIRPORT NAME: La Guardia		SITE NO: 15794	
COUNTY: Queens, N. Y.		CITY: New York		SECTIONAL CHART NO: 239	
AIRPORT SERVICE TYPE: Terminal		POP. OF SMC OR COMMUNITY: 10,694,633		HUB TYPE: L	
ELEVATION: 221	CGS: 5	USL: 5	TEMPERATURE (MEAN MAX): 84.70 F	TOTAL ACRES: 500	
GEOGRAPHIC LOCATION		DESCRIPTIVE LOCATION		AIRPORT ATTENDANCE	
LATITUDE: 40° 46' 29" N		STATUTE MILES: 5 E OF Manhattan		DAYS: 7 HOURS: 24	
LONGITUDE: 73° 52' 42" W		STATUTE MILES: 2.4 SW OF Flushing		MONTHS: 12	
SOURCE: USCCS		NEAREST AIRPORT:			
OWNER: City of New York, N. Y.		ADDRESS: Municipal Building, N.Y.C., N. Y.		TELEPHONE NO: 620-7000	
OPERATOR: Port of New York Authority		ADDRESS: 111 Eighth Avenue, New York 11, N. Y.		TELEPHONE NO: TW8-6326	
MANAGER OR ATTENDANT: Edward Ingraham		ADDRESS: Port of New York Authority, La Guardia Airport,			

DESCRIPTION OF LANDING AREA							REMARKS
RUNWAY DIRECTION	NRW-SSW	WNW-ESE	WNW-ESE				r/w marking
PHYSICAL LENGTH	7000	7000(1)	1600(2)				4-22 all weather
EFFECTIVE GRADIENT	0.17	0.07	0.07 Est.				13-31 all weather
CONNECTED LENGTH	6883	6951	1577				(1) R/W 31-175' dir. placed threshold
WIDTH	150	150	75				(2) Operations Ltd. to takeoffs in W31 dir. only
PAVEMENT TYPE	Bit. Conc.	Bit. Conc.	Bit.				VFR conditions
PAVEMENT SURF	See Reverse						
TYPE RUNWAY LIGHTS	L-819	H-1-819					
RUNWAY IDENTIFICATION	22	13	31	14	32		
GLIDE SLOPE	4:1	50:1	50:1	20:1			
CONTROLLING OBST.	None	None	None				
CUT FROM R/W END	300'	200'					
PRINCIPAL RUNWAY	13-31	WIND COVERAGE 85		INSTRUMENT RUNWAY		14-22	WIND COVERAGE 83
CLEAR ZONES							
CLEARWAYS & STOPWAYS							

BUILDINGS	AIR NAVIGATION AIDS	FLIGHT ACTIVITIES
TERMINAL: 4 fingered terminal	TOWER: <input checked="" type="checkbox"/> FSS: <input type="checkbox"/> WEATHER: <input checked="" type="checkbox"/> UNICOM: <input checked="" type="checkbox"/>	NUMBER FIXED BASE OPERATIONS: 1
ADMIN: In Hangar 27	ILS: <input checked="" type="checkbox"/> VOR: <input checked="" type="checkbox"/> VORT: <input checked="" type="checkbox"/> RADAR: <input checked="" type="checkbox"/>	CHARTER: <input checked="" type="checkbox"/> PATROL: <input type="checkbox"/> INSTRUCTION: <input type="checkbox"/>
HANGAR NO OF Y: -0-	OTHER: Visual Glide Slope Ind.	AGRICULTURAL: <input type="checkbox"/> ADVERTISING: <input type="checkbox"/> SURVEY: <input type="checkbox"/>
NO OF CONVENTIONAL: 12	OTHER: 13-31 LIGHTS REIL 13-31, 2	OTHER (SPECIFY):
FUEL		
TYPE: 20,000 Above Ground Tanks	APPROACH: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> TAXIWAY: ALL	AIRCRAFT OPERATIONS (4)
LO/ST: 100/120	ROTATING OR FLASHING BEACON	ESTIMATED NUMBER OF GENERAL AVIATION
100/120: 100,000 UGT	SIZE: 36" COLOR: C & G	ANNUAL LOCAL AIRCRAFT OPERATIONS: 1672
83/45: 80,000 UGT	OPERATING SCHEDULE: Nights (Low Visibility)	ANNUAL ITINERANT AIRCRAFT OPERATIONS: 13221
40/00: 40,000 UGT	TRUE LIGHT CERT. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TOTAL ANNUAL OPERATIONS: 133,883
12/00: 120,000 UGT	OPERATING SCHEDULE FOR ANY LIGHTS: 13-31, 2	TOTAL OPERATIONS, PER MONTH: 12600
BASED AIRCRAFT		
1 Fire Trucks (2) Genl.	WIND & TRAFFIC INDICATORS	NUMBER OF GENERAL AVIATION
Water Carrying Capacity: 7,500	TETRAPOD: <input type="checkbox"/> LIGHTED: <input type="checkbox"/> CONTROLLED: <input type="checkbox"/>	SINGLE ENGINE: 54
Discharge Rate: 2,400 GPM	TTC: <input type="checkbox"/> LIGHTED: <input type="checkbox"/> CONTROLLED: <input type="checkbox"/>	4-PLACE: 24
any change: 400 lbs.	CONC: <input checked="" type="checkbox"/> LIGHTED: <input checked="" type="checkbox"/>	MULTI-ENGINE: 32
4 Fire Extinguishers + 5 guards +	BEQUENTED CIRCLE: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	TOTAL: 66
SHOW REMOVAL	ARRESTING BARRIERS	NUMBER BASED HELICOPTERS: 4
1 Fire Extinguisher	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> TYPE: _____	REPAIRS
1 Fire Extinguisher	GLASS FENCES	POWER PLANT: MAJOR <input checked="" type="checkbox"/> MINOR <input checked="" type="checkbox"/> NONE <input type="checkbox"/>
1 Fire Extinguisher	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	AIRFRAME: MAJOR <input checked="" type="checkbox"/> MINOR <input checked="" type="checkbox"/> NONE <input type="checkbox"/>

AIR CARRIER OPERATIONS DATA		NON-SCHEDULED	
NAME OF AIRLINE(S): AAT, MOH, NA, PL	SCHEDULED	NAME OF AIRLINE(S):	NON-SCHEDULED
FAL, NYA, AAA, TWA, UAL, USA	EXTRA-STATE AIRLINE(S):	TYPE OF AIRCRAFT:	
APPROX. NUMBER OF DAILY SCHEDULES (DEP): 283 (4)		TYPE OF SERVICE:	
TYPE OF AIRCRAFT: DC-3, DC-6, DC-9, L-188, F-27			
1-202, 1-404, CV 240, 440 L-10493, 727			

MILITARY DATA		CONSTRUCTION DATA	
JOINT USE: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	CRUISE AND UNIT	TOTAL ANNUAL MIL. OPERATIONS: 1200 (4)	
TYPE AND NUMBER OF MILITARY AIRCRAFT:		ANNUAL LOCAL: _____ ANNUAL ITIN: 1200	
FIELD CONDITIONS		CONSTRUCTION DATA	
RUNWAYS: 14-22 Excellent 13-31 excellent		YES-NIS VIOLATIONS: Several stacks, towers and air holders in the horizontal and vertical curves	
TAXIWAYS: Good			
APPROACHES: Good		CONSTRUCTION MARKERS & LIGHTING: Of the above the critical are lighted.	
UNUSUAL CONDITIONS:			

(3) Per 17-1966 data.

DATE: 4-26-67

SIGNED: M. F. Bevilacqua, Civil Engineer

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FEDERAL AVIATION AGENCY AIRPORT FACILITIES RECORD						NYC-600
CITY & STATE New York, New York		AIRPORT NAME John F. Kennedy International		SITE NO 15793		
COUNTY Queens, N.Y.		MET. AREA New York		OC CHART NO 610		
AIRPORT SERVICE TYPE Intercontinental		POP. OF CITY OR COMMUNITY 10,694,633		HUB TYPE L		
ELEVATION 121' MSL		TEMPERATURE (MEAN MAX) 84.7° F		TOTAL ACRES 5200+		
GRAPHIC LOCATION 40° 38' 29" 13 73° 45' 41" 6.4 USCGS		DESCRIPTIVE LOCATION STATUTE MILES SE OF Manhattan STATUTE MILES NE OF OAS Brooklyn SPB DIRECTION NEAREST AIRPORT		AIRPORT ATTENDANCE DAYS 7 HOURS 24 MONTHS 12		
PROPERTY OWNER City of New York						
CREATOR Port of New York Authority						
ADDRESS 111 Eighth Avenue, New York 11, New York						
NAME OF ATTENDANT C. B. Pattarini, General Manager						
ADDRESS John F. Kennedy Intern'l Arpt., Jamaica, New York 11430						
TELEPHONE NO 620-7000						
TELEPHONE NO 656-4444						
DESCRIPTION OF LANDING AREA						
RUNWAY DIRECTION		SE	SE	SE	SE	
PHYSICAL LENGTH		14,572 (1)	10,000 (2)	11,350 (3)	8400	
EFFECTIVE GRADIENT		0	0	0	0	
CORRECTED LENGTH		14,572 (1)	10,000 (2)	11,350 (3)	8400	
WIDTH		150	150	150	150	
SURFACE TYPE		Concrete	Concrete	Concrete	Concrete	
STRENGTH (PSI)		SE	SE	SE	SE	
TYPE RUNWAY LIGHTS		L-819	L-819	L-819	L-819	
RUNWAY IDENTIFICATION		13R	31L	13L	31R	
EXISTING GLIDE ANGLE		50:1	50:1	36:1	50:1	
CONTROLLING OBST.						
DIST FROM RWY END						
PRINCIPAL RUNWAY		13R-31L	WIND COVERAGE		80	
CLEAR ZONES		All R/W's (Instrument) except 14-32 (VER-non instr.)				
CLEARWAYS & STOPWAYS						
BUILDINGS		AIR NAVIGATION AIDS		FLIGHT ACTIVITIES		
TERM. Multi-Term Bldg-Permanent		TOWER <input checked="" type="checkbox"/> FSS <input checked="" type="checkbox"/> WEATHER <input checked="" type="checkbox"/> UNICOM <input checked="" type="checkbox"/>		NUMBER FIXED BASE OPERATORS 1		
AT. 300' x 400' - Brick		ILS <input checked="" type="checkbox"/> VOR <input checked="" type="checkbox"/> RVR <input checked="" type="checkbox"/> RAD/BCR <input checked="" type="checkbox"/>		CHARTER <input checked="" type="checkbox"/> PATROL <input type="checkbox"/> INSTRUCTION <input type="checkbox"/>		
HANGARS NO OF 1 0		RADAR <input checked="" type="checkbox"/> TYPE ASR, ASDE, PAR		AGRICULTURAL <input type="checkbox"/> ADVERTISING <input type="checkbox"/> SURVEY <input type="checkbox"/>		
NO. OF CONVENTIONAL 17		OTHER VASI-13L, 13R-24 hr. op.		OTHER (SPECIFY)		
FUEL		LIGHTS		AIRCRAFT OPERATIONS		
TYPE CAPACITY STORAGE		APPROACH YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> RUNWAY 1 4R & 22L		ESTIMATED NUMBER OF GENERAL AVIATION		
60 50/57		TAXIWAY Yes All		ANNUAL LOCAL AIRCRAFT OPERATIONS		
5/100 530,000 Tank & pipe		Lead in lights 13R, 13L		ANNUAL ITINERANT AIRCRAFT OPERATIONS 45514		
13/100 830,000		ROTATING OR FLASHING BEACON		TOTAL ANNUAL OPERATIONS 45514		
13/100 21,820,000		SIZE 36" COLOR C&G		TOTAL OPERATIONS, PEAK MONTH 6450		
13/100 1,100,000		OPERATING SCHEDULE Dusk to dawn		BASED AIRCRAFT		
13/100		TRUE LIGHT CENT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		NUMBER OF GENERAL AVIATION		
FINE & CRASH EQUIPMENT		OPERATING SCHEDULE FOR NIGHTS Nights		SINGLE ENGINE		
4 FF tks; 2 Nurse tks; 1 r/w		WIND & TRAFFIC INDICATORS		4-PLACE MORE		
corner; 1 bulk former; 1 quick		TETRAHEDRON <input type="checkbox"/> LIGHTED <input type="checkbox"/> CONTROLLED <input type="checkbox"/>		MULTI-ENGINE		
test; 1 ISS Total Capability		TEE <input type="checkbox"/> LIGHTED <input type="checkbox"/> CONTROLLED <input type="checkbox"/>		TOTAL 4		
1000 GPM (discharge rate of		CONE <input checked="" type="checkbox"/> LIGHTED <input type="checkbox"/>		NUMBER BASED HELICOPTERS		
1000 GPM; 1000 GPM; 1600 GPM		SEGMENTED CIRCLE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		REPAIRS		
SHOW REMOVAL		ARRESTING BARRIERS		POWER PLANT MAJOR <input checked="" type="checkbox"/> MINOR <input type="checkbox"/> NONE <input type="checkbox"/>		
TYPE EQUIPMENT High speed plows,		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> TYPE		AIRFRAME MAJOR <input checked="" type="checkbox"/> MINOR <input type="checkbox"/> NONE <input type="checkbox"/>		
blowers, bulldozers, etc.		BLAST FENCES 13L, 13R				
		YES <input checked="" type="checkbox"/> 31L, 31R				
AIR CARRIER OPERATIONS DATA						
SCHEDULED		pr		38 non scheds.		
NAME OF AIRLINE(S) 45 domestic, Intern'l		NAME OF AIRLINE(S) Flying Tigers, War/2,		prnc. users. Flying Tigers, War/2,		
and foreign flag carriers		Amer. Fliers, Caldonia, Capital		Types of Aircraft-DC4, 6, 7, CVIC49		
AVERAGE NUMBER OF DAILY SCHEDULES (DEP) 465		Types of Aircraft-DC4, 6, 7, CVIC49		Brittania		
TYPES OF AIRCRAFT All types jet and prop driven U.S. aircraft plus		Types of Aircraft-DC4, 6, 7, CVIC49		Brittania		
Brittania, Comet, Viscount, Caravelle, Vanguard, Vertol		Types of Aircraft-DC4, 6, 7, CVIC49		Brittania		
MILITARY DATA						
JOINT-USE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> ORGAN AND UNIT		TOTAL ANNUAL MIL OPERATIONS 2250		ANNUAL LOCAL 2250		
TYPES AND NUMBER OF MILITARY AIRCRAFT						
FIELD CONDITIONS		OBSTRUCTION DATA				
RUNWAYS Good r/w marking		TSO-MIS VIOLATIONS				
13R-31L - Inst. W/side strip		/4' unlighted obstruction 235' from center				
TAXIWAYS Good 13L-31R - all weather		line R/W 4R-22L.				
4L-22R - all weather		OBSTRUCTION MARKING & LIGHTING All buildings obstruction				
APPROACHES Good 13R-22L - all weather (modified)		lighted				
OBSTRUCTIONS For ELFAA lights						
REMARKS (1) Landing threshold 3320' from end of R/W 31L; landing threshold 2600' from end of R/W 13R; (R/W fence 65' from take off end of 31L). (2) Landing thresholds R/W 13L-235' from end of R/W. R/W 31R-1024' from end of R/W. (3) R/W 22R landing threshold displaced 3020'.						
Landing Rights Arpt.						
THIS AIRPORT OPEN TO THE GENERAL PUBLIC YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> LANDING FEE YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> TYPE Based on weight						
AIRPORT PRIVATELY OWNED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> TWO WAY RADIO REQUIRED YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>						
IN CHARGE OF NAME & TITLE M.F. Bevilacqua, Civil Engineer						
DATE OF INSPECTION 4-23-67						

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FEDERAL AVIATION AGENCY AIRPORT FACILITIES RECORD									
CITY & STATE <u>Teterboro, New Jersey</u>					AIRPORT NAME <u>Teterboro Airport</u>		SITE NO <u>1434G</u>		
COUNTY <u>Bergen, N.J.</u> MET AREA <u>Paterson-Clifton-Passaic</u>					REGIONAL CHART <u>New York</u>		DC CHART NO <u>890</u>		
AIRPORT SERVICE TYPE <u>Trunk</u>					POP. OF SMSA OR COMMUNITY <u>1,186,873</u>		HUB TYPE <u>Large</u>		
ELEVATION <u>7'</u>		MSL		TEMPERATURE (MEAN MAX) <u>85.30</u>		TOTAL ACRES <u>878</u>			
GEOGRAPHIC LOCATION					DESCRIPTIVE LOCATION			AIRPORT ATTENDANCE	
LATITUDE <u>40° 50' 57"</u>		1 STATUTE MILES SW OF <u>Teterboro</u>		CITY OR TOWN		DAYS <u>All</u>		HOURS <u>24</u>	
LONGITUDE <u>74° 03' 17"</u>		1.1 STATUTE MILES NW OF <u>Lambros</u>		NEAREST AIRPORT		MONTHS <u>All</u>			
SOURCE <u>USCGS</u>									
PROPERTY OWNER <u>The Port of New York Authority</u>					TELEPHONE NO				
ADDRESS <u>111 8th Ave., N.Y.C., N.Y.</u>									
OPERATOR <u>The Port of New York Authority</u>					TELEPHONE NO				
ADDRESS <u>111 8th Ave., N.Y.C., N.Y.</u>									
MANAGER OR ATTENDANT <u>John B. Wilson</u>					TELEPHONE NO <u>288-1775</u>				
ADDRESS <u>Building 27, Industrial Ave., Teterboro, N. J.</u>									
DESCRIPTION OF LANDING AREA									
RUNWAY DIRECTION		N-S		NE-SW		ESE - WNW		(2) S-50,000' (3) S-16,800'	
PHYSICAL LENGTH		5000'		5015'		3527'		R/W-14 Take Off, No Landing	
EFFECTIVE GRADIENT		.020		.010		.057		Based on assumed	
CORRECTED LENGTH		4978		4958		3486		R/W-24,000, ESTD. R/W-32	
WIDTH		100'		100'		80'		8,000 and F-1 sub-	
SURFACE TYPE		Asphalt		Asphalt		Asphalt		grades off markings	
STRENGTH (CSWL)		(2)		(2)		(3)		6-24 all weather	
TYPE RUNWAY LIGHTS		MI L-802		MI L-819		Portable on req.		1-19, 14-32 basic	
RUNWAY IDENTIFICATION		1' 19		6 24		14 32		R/W-14, R/W-32	
EXISTING GLIDE ANGLE		40:1		28:1		45:1		6:1	
CONTROLLING CEST		TR-14		Blad. stack		P-Line planes stack		R/W-14-2727', R/W-32-3527'	
DIST FROM R/W END		1200'		1650'		5000'		415'	
PRINCIPAL RUNWAY		1-19		WIND COVERAGE		91.5		INSTRUMENT RUNWAY 6 91.5 WIND COVERAGE	
CLEAR ZONES		partial 1, 19, 32							
CLEARWAYS & STOPWAYS									
BUILDINGS					AIR NAVIGATION AIDS			FLIGHT ACTIVITIES	
TERM. <u>1 story brick-2320 sq. ft.</u>					TOWER <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			NUMBER FIXED BASE OPERATORS <u>4</u>	
ADJ. <u>2</u>					ILS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			CHARTER <input type="checkbox"/> PATROL <input type="checkbox"/> INSTRUCTION <input checked="" type="checkbox"/>	
HANGARS NO. OF 'Y' <u>10</u>					RADAR <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			AGRICULTURAL <input type="checkbox"/> ADVERTISING <input type="checkbox"/> SURVEY <input type="checkbox"/>	
NO. OF CONVENTIONAL <u>10</u>					OTHER: <u>24 hr. oper.</u>			OTHER (SPECIFY) <u>Business and Corporate</u>	
FUEL					LIGHTS			SALES & SERVICE, RENTALS	
TYPE CAPACITY STORAGE					APPROACH YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> RUNWAY <input checked="" type="checkbox"/> NO <input type="checkbox"/>			AIRCRAFT OPERATIONS	
DO <u>28,000 gals tanks 2900 tbs</u>					TAXIWAY <u>Partial</u>			ESTIMATED NUMBER OF GENERAL AVIATION:	
MINE <u>38,000 gals tanks 4350 tbs</u>					ROTATING OR FLASHING BEACON			ANNUAL LOCAL AIRCRAFT OPERATIONS <u>124,403</u>	
DO/MS <u>1A 40,000 gals tanks 4400 tbs</u>					SIZE <u>36"</u> COLOR <u>C&G</u>			ANNUAL ITINERARY AIRCRAFT OPERATIONS <u>150,104</u>	
DO/MS <u>1A 40,000 gals tanks 4400 tbs</u>					OPERATING SCHEDULE <u>Sunset-Sunrise</u>			TOTAL ANNUAL OPERATIONS <u>274,607</u>	
DO/MS <u>1A 40,000 gals tanks 4400 tbs</u>					TRUE LIGHT CERT. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			TOTAL OPERATIONS, PEAK MONTH <u>31,212</u>	
DO/MS <u>1A 40,000 gals tanks 4400 tbs</u>					OPERATING SCHEDULE FOR RWY LIGHTS			BASED AIRCRAFT	
FIRE & CRASH EQUIPMENT					WIND & TRAFFIC INDICATORS			NUMBER OF GENERAL AVIATION	
2 Fog-Foam Trucks-325 GPM, 5000' range					TETRAHEDRON <input type="checkbox"/> LIGHTER <input type="checkbox"/> CONTROLLED <input type="checkbox"/>			SINGLE ENGINE <u>214</u>	
1000 Gal Water 800 Gal Water					CONE <input checked="" type="checkbox"/> LIGHTED <input type="checkbox"/> CONTROLLED <input type="checkbox"/>			4-PLACE & more <u>15</u>	
75 Gal Foam 100 Gal Foam					SEGMENTED CIRCLE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			MULTI-ENGINE <u>90</u>	
5 Firemen on Duty 1 Nurse Tr.					ARRESTING BARRIERS			10-JETS TOTAL <u>324</u>	
@ Fire Dept. 1-1-1					YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> TYPE			NUMBER BASED HELICOPTERS <u>0</u>	
TYPE EQUIPMENT <u>1 Sno-Cat, 3 Trucks</u>					BLAST FENCES			REPAIRS	
<u>Tractor Plow, Rotary plow</u>					YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			POWER PLANT MAJOR <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> NONE <input type="checkbox"/>	
								AIRFRAME MAJOR <input checked="" type="checkbox"/> MINOR <input type="checkbox"/> NONE <input type="checkbox"/>	
AIR CARRIER OPERATIONS DATA									
NAME OF AIRLINE(S) <u>None</u>					NON-SCHEDULED				
SCHEDULED					NAME OF AIRLINE(S)				
N.Y. Airways					TYPE(S) OF AIRCRAFT				
AVERAGE NUMBER OF DAILY SCHEDULED(S) <u>9</u>					TYPE OF SERVICE				
TYPES OF AIRCRAFT <u>Vertol 107</u>									
MILITARY DATA									
JOINT-USE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> ORGAN, AND UNIT					TOTAL ANNUAL MIL. OPERATIONS <u>600</u>				
TYPES AND NUMBER OF MILITARY AIRCRAFT					ANNUAL LOCAL <u>600</u> ANNUAL ITIN. <u>600</u>				
FIELD CONDITIONS					CONSTRUCTION DATA				
RUNWAYS <u>6-24 - good condition</u>					T30-MIS VIOLATIONS <u>2 Trees west of airport</u>				
1-19 & 14-32 cracking - good condition					255' and 220' RW-19 Sign on bldg. in 7:1				
TAXIWAYS <u>good condition</u>									
APRON(S) <u>good condition</u>					CONSTRUCTION MARKING & LIGHTS <u>Sign Obst. Lt. Violates 7:1</u>				
MISCELLANEOUS					Poles & Trees not lt. Spire & Ant. not lt. Hangar, Obst. Lt., 2 Obst. Lt. Radio Towers & 1 Tank not lt. in conical surface.				
REMARKS <u>(1) Closed to Jet and other aircraft over 80,000' except with prior permission.</u>									
IS THIS AIRPORT OPEN TO THE GENERAL PUBLIC YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> LANDING FEE YES <input type="checkbox"/> NO <input type="checkbox"/> TYPE <u>Max Gross Take Off</u>									
IS AIRPORT PRIVATELY OWNED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> TWO WAY RADIO ACQUIRED YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>									
DATE OF INSPECTION <u>6-22-67</u>									

1743

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FEDERAL AVIATION AGENCY AIRPORT FACILITIES RECORD				FORM APPROV. DUSTY 10-1-64 NO. 64-7001	
CITY & STATE White Plains, New York		AIRPORT NAME Westchester County		SITE 16433	
COUNTY Westchester		REGIONAL CHART New York		OC CHART NO 651	
AIRPORT SERVICE TYPE Trunk		POP. OF SUB-ON COMMUNITY 10,695,000		HVS TYPE Large	
ELEVATION 439 S		TEMPERATURE (MEAN MAX) 85.7°		TOTAL ACRES 697	
GEOGRAPHIC LOCATION LATITUDE $41^{\circ}04'07''$ LONGITUDE $73^{\circ}42'31''$ SOURCE ARP (C.C.S.)		DESCRIPTIVE LOCATION STATUTE MILES NE OF 16 STATUTE MILES W OF 16 CITY OR TOWN White Plains Ramapo Valley NEAREST AIRPORT		AIRPORT ATTENDANCE Every day HOURS 24 MONTHS 12	
PROPERTY OWNER County of Westchester		ADDRESS White Plains, New York		WH 9-1300 Ext. 471	
OPERATOR County Airport Corp., Westchester County Airport, White Plains, N.Y.		ADDRESS		TELEPHONE NO WH 6-9000	
MANAGER OR ATTENDANT J. L. Remmert, Westchester County Airport, White Plains, N.Y.		ADDRESS		TELEPHONE NO WH 6-9000	
DESCRIPTION OF LANDING AREA					REMARKS
RUNWAY DIRECTION	NE/SE	E/W	NE/SW		Runway markings
PHYSICAL LENGTH	6550	5000			15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218-1219-1220-1221-1222-1223-1224-1225-1226-1227-1228-1229-1230-1231-1232-1233-1234-1235-1236-1237-1238-1239-1240-1241-1242-1243-1244-1245-1246-1247-1248-1249-1250-1251-1252-1253-1254-1255-1256-1257-1258-1259-1260-1261-1262-1263-1264-1265-1266-1267-1268-1269-1270-1271-1272-1273-1274-1275-1276-1277-1278-1279-1280-1281-1282-1283-1284-1285-1286-1287-1288-1289-1290-1291-1292-1293-1294-1295-1296-1297-1298-1299-1300-1301-1302-1303-1304-1305-1306-1307-1308-1309-1310-1311-1312-1313-1314-1315-1316-1317-1318-1319-1320-1321-1322-1323-1324-1325-1326-1327-1328-1329-1330-1331-1332-1333-1334-1335-1336-1337-1338-1339-1340-1341-1342-1343-1344-1345-1346-1347-1348-1349-1350-1351-1352-1353-1354-1355-1356-1357-1358-1359-1360-1361-1362-1363-1364-1365-1366-1367-1368-1369-1370-1371-1372-1373-1374-1375-1376-1377-1378-1379-1380-1381-1382-1383-1384-1385-1386-1387-1388-1389-1390-1391-1392-1393-1394-1395-1396-1397-1398-1399-1400-1401-1402-1403-1404-1405-1406-1407-1408-1409-1410-1411-1412-1413-1414-1415-1416-1417-1418-1419-1420-1421-1422-1423-1424-1425-1426-1427-1428-1429-1430-1431-1432-1433-1434-1435-1436-1437-1438-1439-1440-1441-1442-1443-1444-1445-1446-1447-1448-1449-1450-1451-1452-1453-1454-1455-1456-1457-1458-1459-1460-1461-1462-1463-1464-1465-1466-1467-1468-1469-1470-1471-1472-1473-1474-1475-1476-1477-1478-1479-1480-1481-1482-1483-1484-1485-1486-1487-1488-1489-1490-1491-1492-1493-1494-1495-1496-1497-1498-1499-1500-1501-1502-1503-1504-1505-1506-1507-1508-1509-1510-1511-1512-1513-1514-1515-1516-1517-1518-1519-1520-1521-1522-1523-1524-1525-1526-1527-1528-1529-1530-1531-1532-1533-1534-1535-1536-1537-1538-1539-1540-1541-1542-1543-1544-1545-1546-1547-1548-1549-1550-1551-1552-1553-1554-1555-1556-1557-1558-1559-1560-1561-1562-1563-1564-1565-1566-1567-1568-1569-1570-1571-1572-1573-1574-1575-1576-1577-1578-1579-1580-1581-1582-1583-1584-1585-1586-1587-1588-1589-1590-1591-1592-1593-1594-1595-1596-1597-1598-1599-1600-1601-1602-1603-1604-1605-1606-1607-1608-1609-1610-1611-1612-1613-1614-1615-1616-1617-1618-1619-1620-1621-1622-1623-1624-1625-1626-1627-1628-1629-1630-1631-1632-1633-1634-1635-1636-1637-1638-1639-1640-1641-1642-1643-1644-1645-1646-1647-1648-1649-1650-1651-1652-1653-1654-1655-1656-1657-1658-1659-1660-1661-1662-1663-1664-1665-1666-1667-1668-1669-1670-1671-1672-1673-1674-1675-1676-1677-1678-1679-1680-1681-1682-1683-1684-1685-1686-1687-1688-1689-1690-1691-1692-1693-1694-1695-1696-1697-1698-1699-1700-1701-1702-1703-1704-1705-1706-1707-1708-1709-1710-1711-1712-1713-1714-1715-1716-1717-1718-1719-1720-1721-1722-1723-1724-1725-1726-1727-1728-1729-1730-1731-1732-1733-1734-1735-1736-1737-1738-1739-1740-1741-1742-1743-1744-1745-1746-1747-1748-1749-1750-1751-1752-1753-1754-1755-1756-1757-1758-1759-1760-1761-1762-1763-1764-1765-1766-1767-1768-1769-1770-1771-1772-1773-1774-1775-1776-1777-1778-1779-1780-1781-1782-1783-1784-1785-1786-1787-1788-1789-1790-1791-1792-1793-1794-1795-1796-1797-1798-1799-1800-1801-1802-1803-1804-1805-1806-1807-1808-1809-1810-1811-1812-1813-1814-1815-1816-1817-1818-1819-1820-1821-1822-1823-1824-1825-1826-1827-1828-1829-1830-1831-1832-1833-1834-1835-1836-1837-1838-1839-1840-1841-1842-1843-1844-1845-1846-1847-1848-1849-1850-1851-1852-1853-1854-1855-1856-1857-1858-1859-1860-1861-1862-1863-1864-1865-1866-1867-1868-1869-1870-1871-1872-1873-1874-1875-1876-1877-1878-1879-1880-1881-1882-1883-1884-1885-1886-1887-1888-1889-1890-1891-1892-1893-1894-1895-1896-1897-1898-1899-1900-1901-1902-1903-1904-1905-1906-1907-1908-1909-1910-1911-1912-1913-1914-1915-1916-1917-1918-1919-1920-1921-1922-1923-1924-1925-1926-1927-1928-1929-1930-1931-1932-1933-1934-1935-1936-1937-1938-1939-1940-1941-1942-1943-1944-1945-1946-1947-1948-1949-1950-1951-1952-1953-1954-1955-1956-1957-1958-1959-1960-1961-1962-1963-1964-1965-1966-1967-1968-1969-1970-1971-1972-1973-1974-1975-1976-1977-1978-1979-1980-1981-1982-1983-1984-1985-1986-1987-1988-1989-1990-1991-1992-1993-1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-250

FEDERAL AVIATION AGENCY AIRPORT FACILITIES RECORD				FORM AVIATION BUREAU NO. 50-100-1	
CITY & STATE Islip, New York				AIRPORT NAME Long Island-MacArthur Airport	
COUNTY Suffolk				MET AREA New York	
AIRPORT SERVICE TYPE Trunk				SECTIONAL CHART New York	
ELEVATION 96'				TOTAL ACRES 1350	
GEOGRAPHIC LOCATION 40°-47'-50" N 73°-06'-00" W USCGS				DESCRIPTIVE LOCATION Islip, N.Y.	
PROPERTY OWNER Town of Islip				AIRPORT ATTENDANCE 365/Yr 24 HOURS	
ADDRESS Islip, New York				TELEPHONE NO.	
OPERATOR Town of Islip				TELEPHONE NO.	
MANAGER OR ATTENDANT Edward H. Schaefer Box 431, Bohemia, N.Y.				JUNIPER 8-8062	
DESCRIPTION OF LANDING AREA					
RUNWAY DIRECTION	E/W	NW/SE	MARKS		
PHYSICAL LENGTH	5000'	50'	10-28 non std. markings		
EFFECTIVE GRADIENT	0.199	0.240	14-32 Basic		
CONNECTED LENGTH	4807'	4645'	6-24 all weather		
WIDTH	150'	150'	(1) Brush in end of r/w area		
SURFACE TYPE	Asphalt	Asphalt	(6) R/W 6 & parallel T/W under construction		
STRENGTH (F.S.W.L.)	see reverse side	M.I. I-802			
TYPE RUNWAY LIGHTS	H.I. L-419	None			
RUNWAY IDENTIFICATION	6 (6) 24 10 28 14 32	34:1 34:1 22:1 50:1			
EXISTING SLIDE ANGLE	50:1 34:1 16:1	34:1 22:1 50:1			
CONTROLLING DIST	Clear	POLES POLE TANKS TREES			
DIST FROM R/W END	1800'	800' 1250' 2650' 1400'			
PRINCIPAL RUNWAY	6/24	% WIND COVERAGE 77.3%	INSTRUMENT RUNWAY 6/24 % WIND COVERAGE 77.3%		
CLEAR ZONES	Approved Clear Zones for Runway 6/24; Partial Clear Zone for 14/32				
CLEARWAYS & STOPWAYS	None				
BUILDINGS		AIR NAVIGATION AIDS		FLIGHT ACTIVITIES	
TERM. 50'x100'x14' High Brick		TOWER <input checked="" type="checkbox"/> FSS <input checked="" type="checkbox"/> WEATHER <input checked="" type="checkbox"/> PVT. <input checked="" type="checkbox"/>		NUMBER FIXED BASE OPERATORS 4	
ADMIN. 150'x300'x30' steel		ILN <input checked="" type="checkbox"/> NON <input type="checkbox"/> RVR <input checked="" type="checkbox"/> RAD/BCN <input checked="" type="checkbox"/>		CHARTER <input checked="" type="checkbox"/> PATROL <input type="checkbox"/> INSTRUCTION <input checked="" type="checkbox"/>	
HANGARS NO OF '1' None		RADAR <input type="checkbox"/> TYPE		AGRICULTURAL <input type="checkbox"/> ADVERTISING <input type="checkbox"/> SURVEY <input checked="" type="checkbox"/>	
NO. OF CONVENTIONAL 0		OTHER:		OTHER (SPECIFY) Executive, rental service	
FUEL (SEE REVERSE)		LIGHTS		AIRCRAFT OPERATIONS	
TYPE CAPACITY STORAGE		APPROACH YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> RUNWAY(S) (5)		ESTIMATED NUMBER OF GENERAL AVIATION	
60 1200 Gal. Truck		TAXIWAY 822A All Taxiways except the cutoff from 32-28		ANNUAL LOCAL AIRCRAFT OPERATIONS 176,400	
130 9000 U.G.		ROTATING OR FLASHING BEACON		ANNUAL ITINERANT AIRCRAFT OPERATIONS 111,900	
100 2000 Truck		SIZE 24" COLOR C & G		TOTAL ANNUAL OPERATIONS 318,300	
00 9000 U.G.		OPERATING SCHEDULE Dusk to Dawn		TOTAL OPERATIONS, PEAK MONTH 35,700 July	
130 9000 U.G.		TRUE LIGHT CMT. YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
130 9000 U.G.		OPERATING SCHEDULE FOR R/W LIGHTS D to D			
130 9000 U.G.		WIND & TRAFFIC INDICATORS		BASED AIRCRAFT	
130 9000 U.G.		TETRAHEDRON <input type="checkbox"/> LIGHTED <input type="checkbox"/> CONTROLLED <input type="checkbox"/>		NUMBER OF GENERAL AVIATION	
130 9000 U.G.		TEE <input checked="" type="checkbox"/> LIGHTED <input checked="" type="checkbox"/> CONTROLLED <input type="checkbox"/>		SINGLE ENGINE 140	
130 9000 U.G.		CONE <input type="checkbox"/> LIGHTED <input type="checkbox"/> CONTROLLED <input type="checkbox"/>		4-PLACE & PROP 100	
130 9000 U.G.		CIRCUMFERENCE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		Multi-Engine 60	
130 9000 U.G.		ARRESTING BARRIERS		TOTAL 200	
130 9000 U.G.		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> TYPE		NUMBER BASED HELICOPTERS 0	
130 9000 U.G.		BLAST FENCES		REPAIRS	
130 9000 U.G.		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		POWER PLANT MAJOR <input checked="" type="checkbox"/> MINOR <input checked="" type="checkbox"/> NONE <input type="checkbox"/>	
130 9000 U.G.				AIRFRAME MAJOR <input checked="" type="checkbox"/> MINOR <input checked="" type="checkbox"/> NONE <input type="checkbox"/>	
AIR CARRIER OPERATIONS DATA					
1-Student, 1 Int'l, 3 GAC (Trucks)					
NAME OF AIRLINE(S) Allegheny					
NO Scheduled for April '67					
AVERAGE NUMBER OF DAILY SCHEDULED (DEP) 10					
TYPE(S) OF AIRCRAFT Convair 440, H-202A F 27					
MILITARY DATA					
JOINT-USE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> ORIGIN AND UNIT CAP					
TYPES AND NUMBER OF MILITARY AIRCRAFT 1-047 1-UR4					
TOTAL ANNUAL MIL. OPERATIONS 2053					
ANNUAL LOCAL 689 ANNUAL ITIN 1354					
FIELD CONDITIONS					
RUNWAYS Runways developing cracks					
TAXIWAYS All in good condition					
APPROACH All in good condition					
MISCELLANEOUS					
OBSTRUCTION DATA					
TWO-WAY VIOLATIONS Primary surface: R/W 6-24, brush +10'. Navigational aids					
Transitional surfaces: +40' trees in r/w 24					
OBSTRUCTION MARKING & LIGHTING					
REMARKS					
(3) Population given for Suffolk County: Est. 1964 Special Census 235,000					
(4) Local Fire Department will supply 9 trucks, 2,000 gallons water, ambulance, rescue truck, inhalator, floodlights, 5000' hose within 3 mi. of field					
(5) Approach lights assigned with R/W extension midnight to 5 AM.					
IS THIS AIRPORT OPEN TO THE GENERAL PUBLIC YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> LANDING FEE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>					
APPROPRIATELY OWNED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> TWO-WAY RADIO REQUIRED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>					
DATE OF INSPECTION 2-25-67					
SIGNED BY D. Saligman, Civil Eng'n					

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FROM APPROPRIATE BUREAU AND, C4-62-10

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BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PAN AMERICAN WORLD AIRWAYS, INC. -:
OPERATION OF FARMINGDALE AND :
TETERBORO AIRPORTS =

Docket No. 19045 et al.

STATEMENT OF THE DEPARTMENT OF TRANSPORTATION

Pursuant to Rule 14(b) of the Board's Rules of Practice, the Department of Transportation submits the following statement on the extent to which the proposed operation of Farmingdale and Teterboro Airports by Pan American World Airways, Inc. will be in the public interest by reducing congestion at New York's major airports.

I

NEW YORK AREA AIRSPACE AND AIRPORTS
ARE HIGHLY CONGESTED

The major New York Airports (Kennedy, LaGuardia and Newark) are among the busiest and most congested airports in the United States. For example, JFK now has typical peak hour delays of 30 to 60 minutes which will increase to about two hours by 1970. Delays of one hour are forecast for Newark by 1972 and for LaGuardia a year

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later. The existence of congestion and delay in the New York area is acknowledged by most of the parties in this proceeding and Butler ^{1/}, The Port Authority ^{2/}, Pan American ^{3/}, and AOPA ^{4/} have all pointed out the need for alleviating existing congestion.

II

IMPROVED GENERAL AVIATION FACILITIES
IN THE NEW YORK METROPOLITAN AREA ARE
BADLY NEEDED TO ALLEVIATE THIS CONGESTION

Providing additional runways, and improving existing ones, produces a very significant reduction in delays. This can be accomplished by building or improving runways at existing airports or constructing new airports. The reduction in delay depends, of course, on how much activity the new or improved runways can accommodate.

{ If a substantial number of the general aviation operations which would normally use Kennedy, LaGuardia or Newark were to use Teterboro or Farmingdale airports instead, there would be a reduction in demand at the three major airports and, correspondingly, a reduction in delay. The latest FAA forecasts of the percentage of general aviation operations at the three major New York airports are shown in the table: ^{5/}

- 1/ Answer of Butler Aviation Company to Application of Pan American World Airways, Inc. and Motion to Consolidate, November 6, 1968.
2/ Exhibit No. PNYA-1.
3/ Exhibit No. PA-12.
4/ Exhibit No. AOPA-2.
5/ Air Traffic Forecasts Major Air Carrier Airports, October 1967, DOT/FAA Office of Policy Development, Economics Division.

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Airport	% General Aviation for FY		
	1970	1975	1980
Kennedy	11	13	10
LaGuardia	41	34	27
Newark	24	23	18

General aviation shares responsibility for the delays at the three major airports because most general aviation aircraft operate from the same runways as air carriers. During congested conditions a small aircraft using the same runway as air carriers can increase delay to every user of that runway by one minute. Should the congested period last two hours and involve 100 aircraft, the additional delay due to that one general aviation flight would be 100 minutes.

Every aircraft using Farmingdale instead of one of the three major airports will result in some reduction of congestion at the latter. If the flight is operating under Visual Flight Rules (VFR) at Farmingdale, there will be one less operation at one of the three major airports. However, Instrument Flight Rules (IFR) operations at Farmingdale will have at the present some limiting affect on the IFR operations capacity of the three major airports.

Similarly, for every VFR operation conducted at Teterboro, there will be one less operation at one of the major airports resulting in less

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congestion. An aircraft operating IFR at Teterboro, however, may use a slot that would accommodate an aircraft operating in or out of Newark or LaGuardia. Although some IFR interaction between Teterboro and the other New York airports is unavoidable, this will be reduced when the New York Common Instrument Flight Rules Room is operational. This, plus the fact that general aviation operations tend to decrease during IFR conditions, indicates that relief from con-

gestion and delay can be expected even during IFR weather periods, which amount to about 13 percent of the year at Teterboro. The availability of Teterboro and Farmingdale for IFR operations will produce a net increase in the IFR capacity for the New York terminal area.

The proposed development of Teterboro includes extension of Instrument Runway 6-24 to a length of 6,000 feet, and Runway 1-19 to a total length of 7,000 feet. This will increase the airport's capacity and Pan American's plans to create a new Terminal and Hangar area should make the facility very attractive to general aviation. The total cost of this development has been estimated to be \$22,500,000 (Attachment No. 1 to Exhibit PA-7). These airport improvements would provide further congestion relief.

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III

THE EXPENDITURE OF FUNDS BY THE PRIVATE SECTOR OF THE ECONOMY FOR THE DEVELOPMENT OF RELIEVER AIRPORTS SHOULD BE ENCOURAGED

Less than \$200,000 of the General Aviation Discretionary Fund for the development of reliever airports is presently uncommitted 6/. Although other FAAP funds are allocable to general aviation airports, these sums also represent but a small portion of the nation's total needs for airport development. In this instance, Pan American proposes to invest approximately \$20 million in the development of Teterboro, twenty times the approximately \$1 million in Federal funds presently allocated to Teterboro under an FAA Grant Agreement which will terminate if Pan American's application is disapproved.

Expansion of private investment in airport development will benefit the entire aviation community and it is the Department's policy to encourage it wherever possible. Congress, in the Department of Transportation Act, stated as one of the purposes for the establishment of the Department "to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible. . . ." (DOT Act, §2(b)(1), 80 Stat. 931 (1966))

6/ Since 1962 over \$47,000,000 has been appropriated to the Fund.

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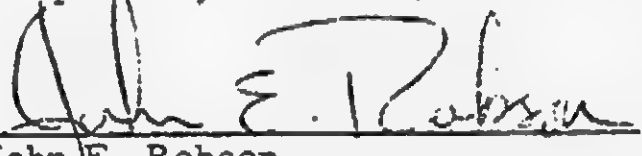
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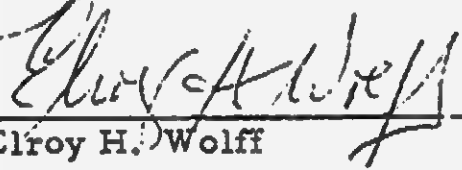
CONCLUSION

Although, under Section 408 of the Act, a number of criteria must be met before the Board may properly approve Pan American's applications, the basic issue in this proceeding is whether Pan American's proposed operation of Teterboro and Farmingdale airports will be "consistent with the public interest." The Department believes that Pan American's undertaking to operate these airports for 30 years, and its proposal to invest substantial amounts of money in their improvement, will lead to significant reductions in the existing and forecast congestion at the major New York airports.

We respectfully request that the Examiner and the Board give substantial weight to these factors in determining whether Pan American's application is consistent with the public interest.

Respectfully submitted,


 John E. Robson
 General Counsel


 Elroy H. Wolff
 Trial Attorney


 Michael Raoul-Duval
 Attorney, FAA

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PRICE WATERHOUSE & CO.

60 BROAD STREET
NEW YORK 10004

February 23, 1967

The Port of New York Authority
New York, New York

In our opinion, Statements A through J present fairly the financial position of The Port of New York Authority at December 31, 1966 and the results of its operations for the year, and Statement L presents fairly the assets and liabilities of the New York State Commuter Car Program at December 31, 1966, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Also, in our opinion, Statement K presents fairly the ten year financial data included therein. Our examination of these Statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.



STATEMENT A Revenues and Reserves

	Year Ended December 31,	
	1966	1965
	(In Thousands)	
Gross Operating Revenues	\$189,953	\$178,629
Operating Expenses •	102,113	98,900
Net Operating Revenues	87,840	79,728
Financial Income		
Income on investments—net	6,893	5,552
Security valuation adjustment	(413)	(4,010)
	84,319	81,271
Debt Service		
Interest on funded debt	22,369	21,248
Serial maturities and sinking fund requirements	21,406	21,384
Short-term note maturities	40,000	31,500
Debt retirement acceleration	1,195	3,551
Total Debt Service	84,971	77,684
Net Increase in Reserves	9,348	3,587
Reserve balances—beginning of year	100,839	97,252
Reserve Balances—End of Year	\$110,187	\$100,839

STATEMENT B Financial Position

	December 31,			December 31,
	1966			1965
	Capital Funds (Statement E)	Reserve Funds (Statement D)	General Operating Funds	Combined Total
	(In Thousands)			
Assets				
Invested in Facilities	\$1,584,037	\$ —	\$ —	\$1,584,037
Investment in Securities (Statement G)	60,759	109,086	12,430	182,276
Cash and Time Deposits	38,967	1,101	7,972	48,042
Other Assets	1,595	—	25,873	27,468
Total Assets	1,685,360	110,187	46,277	1,841,825
Liabilities				
Funded Debt (Statement I)	832,849	—	—	832,849
Debt Retired Through Income (Statement F)	834,772	—	—	834,772
Reserves	—	110,187	—	110,187
Accounts Payable and Other Liabilities	17,738	—	33,914	51,653
Provision for Self-Insurance	—	—	8,313	8,313
Deferred Credits to Income	—	—	4,049	4,049
Total Liabilities	\$1,685,360	\$110,187	\$46,277	\$1,841,825

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Notes to Financial Statements

December 31, 1966

Note A—Accounting Principles:

1. The Port of New York Authority, created in 1921 by compact between the States of New York and New Jersey with the consent of Congress, has no stockholders or equity holders; all revenues or other cash received must be disbursed for specific purposes in accordance with provisions of various statutes and agreements with holders of its bonds and others. The accounts of the Authority are maintained in accordance with generally accepted accounting principles appropriate in the circumstances.

2. The Authority's bond resolutions provide that operating expenses shall not include any allowance for depreciation. However, recovery of facility costs is accomplished through deductions from revenues and reserves of amounts equal to payments to sinking funds and other principal payments on funded debt. These deductions are credited at par to the account "debt retired through income."

3. The amount "invested in facilities" consists primarily of expenditures, including the expenditure of federal and state grants, to acquire, construct, place in operation and improve the facilities of the Port Authority and includes net discount and expense incurred in connection with bonds and notes issued for construction purposes as well as net interest expense during the period of construction.

4. The statement of combined total revenues and reserves is presented for general information purposes only and the amounts stated do not represent revenues applicable to any particular type of bonds. Debt service on each type of bonds is secured, first, by revenues of certain facilities as set forth in the various bond resolutions and, secondly, by the General Reserve Fund. The amount and disposition of revenues applicable to each type of bonds are set forth in Statement C and the amount and disposition of revenues applicable to the reserve funds are shown in Statement D.

5. The long-term and short-term securities are stated at the lower of their respective aggregate amortized cost or market values.

6. Pursuant to bi-state legislation, the Authority is authorized and empowered, upon the election of either state, to purchase and lease railroad cars to commuter railroads of the electing state, and to borrow money for such purpose or for the repayment of advances from the electing state. By resolution dated April 12, 1962, the Authority established an issue of New York State Guaranteed Commuter Car Bonds. Such Car Bonds are secured by the net revenues of the Authority arising out of the lease of commuter railroad cars. Car Bonds are not secured by any other revenues, reserves or assets of the Authority, are not general obligations of the Authority and are not secured by the full faith and credit of the Authority. In the event that lease revenues are not sufficient to provide for scheduled payment of principal and interest, the punctual payment of such debt service is fully and unconditionally guaranteed by the electing state. Accordingly, the financial position of this program is presented separately in Statement L, and the assets and liabilities of the program are not included in any of the other accompanying financial statements of the Authority.

Note B—Commitments:

At December 31, 1966, the Authority was committed under various contracts to the completion over the next four or five years of approximately \$108,000,000 of structures.

Note C—Leases:

LaGuardia Airport and John F. Kennedy International Airport are leased from the City of New York for a term expiring in the year 2015. Port Newark and Newark Airport are leased from the City of Newark for a term expiring in the year 2016.

The Hoboken-Port Authority Marine Terminal is leased from the City of Hoboken under a lease which will expire in the year 2002, unless a fifty-year extension is executed by then.

A parcel of property at the Brooklyn-Port Authority Marine Terminal is leased from the City of New York until the year 2011.

Note D—Funded Debt:

On January 12, 1967, the Authority issued \$50,000,000 Consolidated Notes, Series T,

due December 28, 1967, at an average net interest cost of 3.684 percent per annum.

Note E—General:

Pursuant to legislative and judicial authorizations, the Authority on September 1, 1962 acquired by condemnation the former Son & Manhattan Railroad through the Port Authority Trans-Hudson Corporation, a subsidiary of The Port of New York Authority established for that purpose. The accounts of the subsidiary corporation are consolidated in the accompanying Port Authority financial statements as accounts of a facility whose net revenues are first pledged for Consolidated Bonds. That portion of the total acquisition cost which will be accounted for by condemnation awards for the property is dependent upon final judicial determination. The Port Authority Trans-Hudson Corporation capital accounts include \$17,782,286, representing sums advanced therefor to condemnees and about \$535,000, including interest paid on account of fixture and leasehold claims to December 31, 1966.

On December 30, 1966, the New York State Supreme Court, Appellate Division, First Department, rendered a decision setting the total condemnation award for the Hudson Tubes road and equipment, including the Hudson Terminal Buildings at \$21,496,000 (exclusive of interest and the fixture and leasehold claims referred to above). The order of the Appellate Division thus modified the decree of the Supreme Court of the State of New York (New York County) entered June 13, 1966 which had awarded a total of \$72,996,000 (exclusive of interest and the fixture and leasehold claims) for this property. The condemnees have appealed from the decision of the Appellate Division to the Court of Appeals, New York State's highest court, with respect to the \$3,500,000 award for the road and equipment and the determination of the rates of interest. PATH Corporation has also appealed from the award for the road and equipment.

By condemnation proceedings in the New York State Supreme Court, the Authority has acquired title, for purposes of the World Trade Center, to all of the non-governmentally owned real property located in the Hudson Tubes-World Trade Center area as defined by statute.

STATEMENT C Operating Fund Revenues Year Ended December 31, 1966

	Related to				
	General and Refunding Bonds	Air Terminal Bonds	Marine Terminal Bonds (In Thousands)	Consolidated Bonds	Combined Total
Gross Operating Revenues	\$81,027	\$76,896	\$ 8,924	\$ 23,104	\$189,953
Operating Expenses	37,389	41,008	3,405	20,309	102,113
Net Operating Revenues	43,638	35,888	5,518	2,794	87,840
Financial Income					
Income on investments--net	1,694	467	75	—	2,238
Security valuation adjustment	(20)	57	6	—	44
Net Revenues	45,312	36,413	5,601	2,794	90,122
Debt Service					
Interest on funded debt	415	1,337	135	20,480	22,369
Serial maturities and sinking fund requirements	180	3,322	271	17,631	21,406
Short-term note maturities	—	—	—	40,000	40,000
Total Debt Service	596	4,660	407	78,111	83,776
Transfers to and (from) Reserves	44,715	31,753	5,193	(75,316)	6,346
Analysis of Transfers					
From General Reserve-- to cover net deficit	—	—	—	(75,316)	(75,316)
To General Reserve-- to bring to 10% of funded debt	38,339	27,224	4,453	—	70,016
To Special Reserves	6,376	4,528	740	—	11,645
Net Transfers	\$44,715	\$31,753	\$ 5,193	\$(75,316)	\$ 6,346

STATEMENT D Analysis of Reserve Funds Year Ended December 31, 1966

	General Reserve Fund	Special Reserve Fund	Air Terminal Reserve Fund (In Thousands)	Marine Terminal Reserve Fund	Combined Total
Balance—January 1, 1966	\$85,592	\$ 9,089	\$5,299	\$ 857	\$100,839
Income on investments—net	3,949	420	245	39	4,655
Security valuation adjustment	(392)	(38)	(22)	(4)	(457)
	89,149	9,472	5,522	892	105,036
Appropriations for:					
Debt retirement acceleration— payments to sinking funds	565	629	—	—	1,195
Total	88,584	8,842	5,522	892	103,841
Transfers (to) and from Operating Funds:					
Deficit related to Consolidated Bonds	(75,316)	—	—	—	(75,316)
Revenues related to:					
General and Refunding Bonds	38,339	6,376	—	—	44,715
Air Terminal Bonds	27,224	—	4,528	—	31,753
Marine Terminal Bonds	4,453	—	—	740	5,193
Net transfers	(5,299)	6,376	4,528	740	6,346
Balance—December 31, 1966	\$83,284	\$15,218	\$10,051	\$1,633	\$110,187
Represented by:					
Investment in securities	\$82,452	\$15,066	\$ 9,950	\$1,617	\$109,086
Cash	832	152	100	16	1,101

See Notes to Financial Statements

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STATEMENT E Capital Funds Assets and Liabilities December 31, 1966

	Related to facilities whose net revenues are first pledged for				
	General and Refunding Bonds	Air Terminal Bonds	Marine Terminal Bonds	Consoli- dated Bonds	Combined Total
	(In Thousands)				
Assets					
Invested in Facilities					
Completed construction—owned	\$597,693	\$ 10,553	\$ —	\$177,916	\$ 786,163
Completed construction—leased	—	562,258	87,419	23,952	673,629
Construction in progress	12,563	32,411	5,285	73,983	124,243
	<u>610,256</u>	<u>605,223</u>	<u>92,704</u>	<u>275,852</u>	<u>1,584,037</u>
Investment in Securities	8,839	4,960	464	46,495	60,759
Cash and Time Deposits	5,669	3,181	297	29,819	38,967
Other Assets	775	319	2	498	1,595
Total Assets	<u>625,541</u>	<u>613,683</u>	<u>93,469</u>	<u>352,665</u>	<u>1,685,360</u>
Liabilities					
Funded Debt (Statement I)	24,490	46,902	5,360	758,097	832,849
Interfund Accounts	310,393	514,111	82,800	(907,304)	—
Debt Retired Through Income (Statement F)	288,322	45,256	4,640	496,553	834,772
Accounts Payable and Other Liabilities	2,335	7,414	669	7,320	17,738
Total Liabilities	<u>\$625,541</u>	<u>\$613,683</u>	<u>\$93,469</u>	<u>\$352,665</u>	<u>\$1,685,360</u>

STATEMENT F Debt Retired Through Income Year Ended December 31, 1966

	December 31, 1966 (In Thousands)
Debt Retired Through Income	
Balance at January 1, 1966	\$736,296
Net revenues and reserves applied to retirement of debt as detailed in Statement I	63,079
Total	<u>799,375</u>
Contributed by Federal and State Agencies in Aid of Construction	
Balance at January 1, 1966	41,652
Amounts received under Federal Airport Act	32
Amounts received under Federal Highway Act	880
Total	<u>42,565</u>
Appropriated Reserves Invested in Facilities	
Balance at January 1 and December 31, 1966	8,468
	<u>850,408</u>
Less:	
Cost of Refunding and Consolidating Debt	
Balance at January 1 and December 31, 1966	15,636
Total	<u>\$834,772</u>

See Notes to Financial Statements

STATEMENT G Investment in Securities December 31, 1966

	Principal Amount	Quoted Market Value (In Thousands)	Amortized Cost
Short Term			
United States Treasury Securities			
Due 1/28/67	\$ 2,000	\$ 1,994	\$ 1,992
Due 2/9/67	1,000	995	994
Due 2/16/67	6,000	5,985	5,959
Due 4/21/67	8,500	8,376	8,355
Due 6/22/67	55,860	54,564	54,373
Security valuation allowance at December 31, 1966			—
Total Short Term	73,360	71,896	71,674
Long Term			
United States Treasury Securities			
Notes			
5% due 11/15/70	600	503	501
Bonds:			
4% due 2/15/70	13,000	12,638	12,946
2½% due 12/15/72-67	1	1	1
4% due 8/15/73	10,100	9,670	10,289
4½% due 2/15/74	1,000	961	995
4½% due 5/15/74	1,500	1,455	1,505
3½% due 11/15/74	12,000	11,385	11,984
4% due 2/15/80	16,900	15,886	16,898
3½% due 11/15/80	1,000	890	997
3½% due 6/15/83-78	1,200	1,018	1,231
4½% due 3/15/85-75	12,350	11,809	12,479
3½% due 2/15/90	13,250	11,295	12,865
4½% due 5/15/94-89	16,000	14,920	16,070
3% due 2/15/95	600	503	600
3½% due 11/15/98	7,978	6,771	7,957
The Port of New York Authority Bonds			
General & Refunding			
8th Series, 2% due 8/15/74	786	636	710
Air Terminal			
1st Series, 3% due 6/15/78	1,043	902	994
2nd Series, 2½% due 10/1/79	377	297	336
3rd Series, 2.2% due 12/1/80	610	377	449
Marine Terminal			
1st Series, 2½% due 11/1/78	452	357	413
2nd Series, 2.2% due 12/1/80	433	320	379
Consolidated			
1st Series, 3% due 11/1/82	25	20	22
2nd Series, 2½% due 9/1/84	127	96	99
4th Series, 2½% due 4/1/85	1,119	867	1,022
5th Series, 2.9% due 12/1/83	293	234	269
6th Series, 3% due 5/1/86	1,011	823	924
7th Series, 3.4% due 9/1/88	251	220	246
8th Series, 3.4% due 2/1/87	143	125	138
10th Series, 3½% due 10/1/87	626	607	616
12th Series, 3½% due 5/1/88	207	181	202
14th Series, 3½% due 2/1/89	1,167	1,061	1,184
16th Series, 4½% due 10/1/89	2,625	2,611	2,616
18th Series, 3½% due 11/1/91	5	4	4
Security valuation allowance at December 31, 1966			(8,496)
Total Long Term	\$118,579	\$109,458	109,458
Accrued Interest Receivable			1,143
Total Investment in Securities			\$182,276

See Notes to Financial Statements

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STATEMENT H Analysis of Sinking Funds Year Ended December 31, 1965

	1965 (In Thousands)
Sinking Fund balances—January 1	\$ —
Additions to Sinking Funds	
Obligatory payments from operating accounts	180
General and Refunding Bonds	3,322
Air Terminal Bonds	271
Marine Terminal Bonds	6,081
Consolidated Bonds	
Appropriation for retirement in anticipation of future requirements from	
General Reserve Fund	565
Special Reserve Fund	629
Air Terminal Reserve Fund	—
Marine Terminal Reserve Fund	—
Adjustment of cost of Port Authority bonds to redemption price	628
Total additions to Sinking Funds	11,680
Deductions from Sinking Funds	
Mandatory Retirements	
General and Refunding Bonds Eighth Series	187
Air Terminal Bonds First Series	1,509
Second Series	1,409
Third Series	507
Marine Terminal Bonds First Series	285
Consolidated Bonds First Series	999
Second Series	500
Fourth Series	851
Seventh Series	505
Eighth Series	1,030
Twelfth Series	511
Fourteenth Series	1,189
Sixteenth Series	540
Retirements in anticipation of future sinking fund requirements	
General & Refunding Bonds Ninth Series	578
Tenth Series	291
Eleventh Series	171
Consolidated Bonds First Series	7
Second Series	588
Eighth Series	9
Total deductions from Sinking Funds	11,680
Sinking Fund balances—December 31	\$ —

See Notes to Financial Statements

STATEMENT I Funded Debt Year Ended December 31, 1988

		January 1, 1988	Issued (In Thousands)	Retired	December 31, 1988
General and Refunding Bonds					
Eighth Series,	2% due 1974	\$ 8,862	\$ —	\$ 187	\$ 8,675
Ninth Series,	1½% due 1985	5,470	—	578	4,892
Tenth Series,	1¼% due 1985	2,861	—	291	2,570
Eleventh Series,	1¼% due 1986	8,524	—	171	8,353
		<u>25,717</u>	<u>—</u>	<u>1,227</u>	<u>24,490</u>
Air Terminal Bonds					
First Series,	3% due 1978	21,008	—	1,480	19,528
Second Series,	2½% due 1979	21,136	—	1,396	19,740
Third Series,	2.20% due 1980	8,136	—	502	7,634
		<u>50,280</u>	<u>—</u>	<u>3,378</u>	<u>46,902</u>
Marine Terminal Bonds					
First Series,	2½% due 1978	3,897	—	283	3,614
Second Series,	2.20% due 1980	1,746	—	—	1,746
		<u>5,643</u>	<u>—</u>	<u>283</u>	<u>5,360</u>
Consolidated Bonds					
First Series,	3% due 1982	24,226	—	1,006	23,220
Second Series,	2¾% due 1984	19,520	—	1,098	18,422
Fourth Series,	2¾% due 1985	28,851	—	851	28,000
Fifth Series,	2.90% due 1983	15,061	—	—	15,061
Sixth Series,	3% due 1986	23,870	—	—	23,870
Seventh Series,	3.40% due 1986	21,500	—	500	21,000
Eighth Series,	3.40% due 1987	43,000	—	1,009	41,991
Ninth Series,	3½% due 1966-1975	14,400	—	1,800	12,600
Tenth Series,	3¼% due 1987	30,000	—	—	30,000
Eleventh Series,	2½% due 1966	2,000	—	2,000	—
	2¼% due 1967-1969	6,000	—	—	6,000
	3% due 1970-1978	18,000	—	—	18,000
	3¾% due 1988	34,237	—	497	33,740
Twelfth Series,	3¼% due 1966	1,250	—	1,250	—
Thirteenth Series,	3.40% due 1967-1969	3,750	—	—	3,750
	3½% due 1970-1977	10,000	—	—	10,000
	2¾% due 1978	1,250	—	—	1,250
Fourteenth Series,	3½% due 1989	53,405	—	1,155	52,250
Fifteenth Series,	4% due 1966-1975	17,500	—	1,750	15,750
	4.10% due 1976-1979	7,000	—	—	7,000
Sixteenth Series,	4¼% due 1989	24,275	—	525	23,750
Seventeenth Series,	5% due 1966-1967	3,000	—	1,500	1,500
	3.40% due 1968	1,500	—	—	1,500
	3½% due 1969-1975	10,500	—	—	10,500
	3.70% due 1976-1979	6,000	—	—	6,000
	1% due 1980	1,500	—	—	1,500
Eighteenth Series,	3% due 1966	1,750	—	1,750	—
	3.10% due 1967-1969	5,250	—	—	5,250
	3¼% due 1970-1975	10,850	—	—	10,850
	3½% due 1976-1981	12,600	—	—	12,600
Nineteenth Series,	3½% due 1991	23,743	—	—	23,743
Twentieth Series,	3¼% due 1993	35,000	—	—	35,000
Twenty-first Series,	3.40% due 1993	25,000	—	—	25,000
Twenty-second Series,	3¼% due 1993	25,000	—	—	25,000
Twenty-third Series,	3¼% due 1994	25,000	—	—	25,000
Twenty-fourth Series,	3½% due 1994	25,000	—	—	25,000
Twenty-fifth Series,	3.20% due 1966-1973	12,000	—	1,500	10,500
	3% due 1974-1978	7,500	—	—	7,500
	3.10% due 1979-1980	3,000	—	—	3,000
	3.20% due 1981-1984	6,000	—	—	6,000
Twenty-sixth Series,	3½% due 1995	35,000	—	—	35,000
Twenty-seventh Series,	3¾% due 1995	25,000	—	—	25,000
Twenty-eighth Series,	3¾% due 1996	25,000	—	—	25,000
Twenty-ninth Series,	3½% due 1996	25,000	—	—	25,000
Thirtieth Series,	3¾% due 1998	25,000	—	—	25,000
		<u>774,288</u>	<u>—</u>	<u>18,191</u>	<u>756,097</u>
Consolidated Notes					
Series S,	2¾% due December 28, 1988	—	40,000	40,000	—
		<u>774,288</u>	<u>40,000</u>	<u>58,191</u>	<u>756,097</u>
		<u>\$855,928</u>	<u>\$ 40,000</u>	<u>\$ 63,079</u>	<u>\$832,849</u>
Total Funded Debt					
See Notes to Financial Statements					

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STATEMENT J Funded Debt Amortization 1967-1998

Debt Service Total All Issues				Amortization			
Per Value: \$832,849							
Year	Total	Interest	Amortization	Consolidated Bonds	General and Refunding Bonds	Air Terminal Bonds	Marine Terminal Bonds
(In Thousands)							
1967	\$ 50,609	\$ 27,057	\$ 23,552	\$ 18,485	\$ 1,167	\$ 3,504	\$ 396
1968	52,780	26,408	26,372	21,166	1,190	3,597	419
1969	53,252	25,576	27,676	22,354	1,214	3,679	429
1970	53,234	24,701	28,533	23,084	1,238	3,772	439
1971	53,083	23,792	29,291	23,656	1,313	3,873	449
1972	54,125	22,852	31,273	24,859	1,994	3,960	460
1973	54,308	21,855	32,443	25,677	2,230	4,065	471
1974	53,917	20,837	33,080	27,304	1,120	4,174	482
1975	54,323	19,762	34,561	28,620	1,161	4,286	494
1976	52,514	18,674	33,840	27,756	1,177	4,401	506
1977	52,023	17,587	34,436	28,205	1,193	4,520	518
1978	52,532	16,421	35,111	32,218	1,211	2,531	151
1979	51,135	15,212	35,923	33,874	1,228	667	154
1980	49,889	14,050	35,839	34,592	1,247		
1981	48,007	12,899	35,108	33,844	1,264		
1982	45,111	11,817	33,294	32,012	1,282		
1983	45,540	10,720	34,820	33,520	1,300		
1984	45,904	9,556	36,348	35,030	1,318		
1985	43,928	8,361	35,567	34,925	642		
1986	43,957	7,107	36,850	36,850			
1987	38,437	5,837	32,600	32,600			
1988	29,508	4,833	24,675	24,675			
1989	26,532	3,982	22,550	22,550			
1990	22,346	3,296	19,050	19,050			
1991	21,692	2,642	19,050	19,050			
1992	19,051	2,001	17,050	17,050			
1993	18,431	1,381	17,050	17,050			
1994	12,494	844	11,650	11,650			
1995	8,852	452	8,400	8,400			
1996	4,662	162	4,500	4,500			
1997	1,338	88	1,250	1,250			
1998	1,541	41	1,500	1,500			
Total	<u>\$1,215,055</u>	<u>\$380,813</u>	<u>\$834,242</u>	<u>\$757,356</u>	<u>\$24,489</u>	<u>\$47,029</u>	<u>\$5,368</u>

NOTES: Includes all mandatory payments (including sinking fund requirements and serial maturities) whether payable from revenues or other sources, upon the assumption that: (1)—the presently outstanding bonds will not be retired prior to maturity except in accordance with the mandatory retirement provisions of the resolutions establishing the series of which such bonds form a part; (2)—the amortization payment will be made each year on the latest permissible date on which such payment is required to be made; (3)—such payments will be in the amount scheduled to be made for such year. Interest shown under "Debt Service Total All Issues" is computed on the same assumptions as amortization.

See Notes to Financial Statements

STATEMENT K Selected Financial Data—A Ten-Year Comparison (In Thousands)

	1988	1985	1984	1983	1982	1981	1980	1979	1978	1977
Net Revenues (A)										
Gross Operating Revenues	\$ 189,953	\$ 178,629	\$ 167,256	\$ 154,025	\$ 135,059	\$ 123,267	\$ 115,370	\$ 105,862	\$ 93,183	\$ 84,753
Operating Expenses	102,113	98,900	89,177	79,797	65,742	56,018	52,688	45,805	42,513	39,579
Net Operating Revenues	87,840	79,728	78,079	74,228	69,317	67,249	62,682	60,056	50,669	45,173
Other Income (B)	6,883	5,552	5,123	4,824	4,806	4,339	4,669	3,600	2,677	2,217
Net Revenues	94,723	85,281	83,202	79,053	74,123	71,588	67,371	63,656	53,346	47,390
Interest on Funded Debt	22,969	21,248	20,291	18,752	16,280	14,807	13,291	11,228	9,159	8,148
Net Revenues after Interest	72,753	64,032	62,911	60,301	57,843	56,781	54,080	52,428	44,187	41,244
Times, Interest Earned	4.24	4.01	4.10	4.22	4.55	4.83	5.07	5.87	5.82	7.71
Mandatory Redemption Payments	21,406	21,384	19,848	20,264	20,777	19,002	17,449	16,718	11,633	10,118
Net Revenues after Debt Service (C)	\$ 50,957	\$ 42,648	\$ 43,062	\$ 40,036	\$ 37,066	\$ 37,779	\$ 36,631	\$ 35,710	\$ 32,554	\$ 31,126
Times, Debt Service Earned	2.16	2.00	2.07	2.03	2.00	2.12	2.19	2.28	2.57	2.91
Net Changes in Reserves										
Transferred from Revenues (above)	\$ 50,957	\$ 42,648	\$ 43,062	\$ 40,036	\$ 37,066	\$ 37,779	\$ 36,631	\$ 35,710	\$ 32,554	\$ 31,126
Short Term Note Maturities	(40,000)	(31,500)	(33,000)	(33,000)	(31,000)	(32,000)	(35,000)	(24,000)	(19,000)	(13,500)
Long Term Debt Retirement Acceleration	(1,195)	(3,551)	(3,147)	(2,590)	(2,038)	(489)	(1,021)	(925)	(796)	(2,070)
Adjustment of Securities to Market Value (D)	(413)	(4,010)	106	(2,967)	2,310	(1,943)	6,598	(3,610)	(3,913)	3,095
Net Change	\$ 9,348	\$ 3,587	\$ 7,022	\$ 1,478	\$ 6,338	\$ 3,347	\$ 7,208	\$ 7,175	\$ 8,845	\$ 18,651
Reserves—										
At Year End										
General Reserve	\$ 83,294	\$ 85,592	\$ 80,610	\$ 73,949	\$ 68,761	\$ 62,609	\$ 61,082	\$ 57,480	\$ 50,799	\$ 42,067
G & R Special Reserve	18,218	9,089	10,352	10,780	12,955	13,305	12,512	10,535	10,573	10,795
Air Terminal Reserve	10,051	5,299	5,413	4,423	5,825	5,376	4,468	3,087	2,642	2,368
Marine Terminal Reserve	1,633	857	875	1,075	1,209	1,121	1,001	753	666	606
Total	\$ 110,187	\$ 100,839	\$ 97,252	\$ 90,229	\$ 88,751	\$ 82,412	\$ 79,065	\$ 71,857	\$ 64,682	\$ 55,837
Funded Debt—										
At Year End										
General and Refunding Bonds	\$ 24,490	\$ 25,717	\$ 27,035	\$ 33,190	\$ 38,761	\$ 46,077	\$ 51,782	\$ 58,566	\$ 64,893	\$ 70,594
Air Terminal Bonds	48,902	50,280	53,548	58,330	59,898	62,829	64,512	65,895	66,326	66,748
Marine Terminal Bonds	5,360	5,643	5,777	6,543	6,913	7,276	7,630	7,976	8,312	8,642
Consolidated Bonds	756,897	774,268	719,749	643,434	582,041	509,911	486,903	442,372	368,468	274,692
Total	\$ 832,849	\$ 855,928	\$ 806,109	\$ 739,497	\$ 687,613	\$ 626,093	\$ 610,827	\$ 574,809	\$ 507,999	\$ 420,676
Invested in Facilities—										
At Year End	\$1,884,037	\$1,503,765	\$1,402,722	\$1,327,956	\$1,224,227	\$1,116,109	\$1,012,540	\$ 920,249	\$ 816,700	\$ 725,394
Debt Retirement Through Revenues and Reserves										
Annually	\$ 63,079	\$ 56,681	\$ 56,388	\$ 56,116	\$ 54,480	\$ 51,734	\$ 53,982	\$ 42,190	\$ 31,677	\$ 28,472
Cumulative	759,375	736,296	679,615	623,227	567,111	512,631	460,897	406,915	364,725	333,048

(A) These combined totals are presented for general information purposes only; the net revenues of the various facilities for the years listed were pledged in support of particular issues of bonds without availability for other bonds or for expenses of facilities financed by other bonds, except, under limited circumstances, through the medium of certain reserve funds.

(B) Other income includes income from investment of reserves and net operating revenues.

(C) Net deficits of the facilities whose net revenues are first pledged to Consolidated Bonds were met by payments from Reserves; they are not shown in this Schedule as "Deductions from Reserves," but rather reduce the annual

amounts otherwise available for reserves to produce the annual amounts shown as "Net Revenues after Debt Service."

(D) Investments are carried at their aggregate amortized cost or market value, whichever is lower; this item represents annual adjustments to reflect that basis.

See Notes to Financial Statements

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STATEMENT L

The Port of New York Authority
New York State Commuter Car Program
Assets and Liabilities

	December 31, 1966			December 31, 1965
	Related to cars			
	leased to The New York Central Railroad Company	leased to The Long Island Rail Road Company	Combined Total	Combined Total
Assets	(In Thousands)			
Invested in commuter cars	\$14,250	\$5,462	\$19,712	\$19,400
Invested in U.S. Government Securities	—	133	133	465
Cash	10	17	28	15
Other assets	73	—	73	77
Total assets	<u>\$14,334</u>	<u>\$5,613</u>	<u>\$19,948</u>	<u>\$19,959</u>
Liabilities				
State Guaranteed Commuter Car Bonds	12,450	—	12,450	14,260
Debt retired through income	1,800	5,475	7,275	5,465
Accounts payable and other liabilities	84	138	223	234
Total liabilities	<u>\$14,334</u>	<u>\$5,613</u>	<u>\$19,948</u>	<u>\$19,959</u>

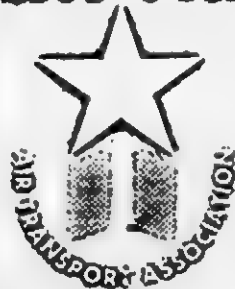
See Note A-6 to Financial Statements

BOR-R-1

Docket 19045 & 19046

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AIR TRANSPORT ASSOCIATION of America

1000 Connecticut Avenue, N.W. • Washington, D. C. 20036

Area Code 202 462-5300

DANIEL B. PRIEST Vice President-Public Relations

FOR IMMEDIATE RELEASE**AIRLINES PROPOSE GENERAL AVIATION AIRPORTS
TO RELIEVE CONGESTION**

WASHINGTON, D. C., Dec. 21 -- "Encouraging the creation and development of new general aviation airports suitably located in metropolitan areas," was the key point in a five-point airline policy on general aviation released today by the Air Transport Association of America (ATA).

Stuart G. Tipton, president of ATA, the service organization that represents the majority of the scheduled certificated airlines of the United States, said, "The policy was adopted by the ATA's Board of Directors and represents their strong feeling that the development of new general aviation facilities, including general aviation airports, is the best and most practical long-term solution to relieving the mounting congestion at major metropolitan airports."

The other four points:

--- Encourage the Federal Aviation Administration to establish federal regulations requiring all aircraft operating within the terminal air space of major airports to meet uniform standards for traffic control, airborne equipment and pilot proficiency.

--- Encourage operators of high volume air carrier airports to establish proportional airport landing fees and charges.

--- Encourage and assist the FAA to develop adequate air traffic control procedures for V/STOL (vertical take-off) aircraft.

--- Encourage the FAA and Civil Aeronautics Board to study the increasing volume of air taxi type operations at air carrier hub airports.

- ATA -

#106 12/21/67

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AIRLINE POLICY ON GENERAL AVIATION

A. Encourage the creation and development of general aviation airports, suitably located in metropolitan areas, which will attract a maximum volume of general aviation activity away from air carrier airports to achieve more efficient utilization of air space and airport capacity. To attract and serve various segments of general aviation, such reliever airports must be suitably located and should have:

1. Convenient Ground transportation to business areas;
2. Convenient transportation to air carrier airports;
3. Adequate navigational and landing aids, etc.;
4. Adequate aircraft servicing facilities;
5. Adequate passenger and crew facilities and services.

Airport use charges such as landing fees should provide sufficient differential between general aviation airports and airline airports to encourage general aviation to use those airports specifically provided for their use.

States and municipalities should encourage the full development and utilization of privately-owned general aviation airports.

B. Encourage the Federal Aviation Administration to establish federal regulations which will require that all aircraft operating within the terminal air space at major airports meet uniform standards for traffic control, airborne equipment and pilot proficiency. This objective is necessary to achieve optimum safety and compatibility

with the air traffic system and efficient utilization of all airport facilities created as an integral part of the national air transportation network.

- C. Encourage operators of high volume air carrier airports to establish airport landing fees and charges that give due consideration to proportional occupancy of airfield facilities and approaches, that promote conservation of investment in airport facilities, and that encourage full utilization of reliever airports.

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- D. Encourage and assist the Federal Aviation Administration to develop adequate air traffic control procedures for V/STOL aircraft which will permit maximum advantage to be taken of the unique characteristics of V/STOL without interfering with operations of conventional aircraft. The greatly expanded use of V/STOL holds promise of providing relief and alternative solutions for the growing problem of public ground access to airports.
- E. Encourage the Federal Aviation Administration and the Civil Aeronautics Board to study the increasing volume of air taxi type operations at air carrier hub airports. Such operations should complement air carrier services at major airports without interfering with airline service.
- F. The scheduled airline industry pledges its full support and cooperation in efforts to accomplish the foregoing recommendations at the earliest possible date.

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CAB Docket No. 19045 et al

Exhibit No. PNYA-1

Page 1 of 8

On August 9, 1965, a joint press release (Attachment A),

issued by the Port Authority and Pan American, reported on a press conference held that day at Teterboro Airport. Participating in this conference was Governor Richard J. Hughes of New Jersey and Commissioner Keith McHugh of New York, representing Governor Nelson A. Rockefeller of New York.

This conference was called for the purpose of publicly announcing that a preliminary agreement had been reached, under the

terms of which a major redevelopment of Teterboro would take place and the operation thereof, for a term of years, would be undertaken by Pan American. The definitive operating agreement now before the Board was structured upon the basic principles of this preliminary understanding.

The Port Authority decided to enter into this preliminary arrangement, and later the definitive agreement, because of its conviction that Pan American is qualified to promote and fully develop Teterboro Airport over the shortest interval of time. Basic considerations involved were the following:

- (1) Teterboro will continue as a public airport for general aviation.

Pan American expressed a willingness to agree to continue the operation of the airport as a public airport. Its broad experience in the development

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and operation of airports during World War II on behalf of the Federal Government in locations all over the world, its demonstrated ability to handle such complex and diverse tasks as being the prime contractor to the Air Force at Cape Kennedy, the operator of the Atlantic Missile Range and the contractor for numerous other research and test facilities for the military throughout the world, were qualifications which demonstrated its ability to properly manage and operate Teterboro Airport. Its agreement that the airport will remain a public airport will insure that its demonstrated expertise in airport operation will be used, in this instance,

for the accomplishment of the basic purpose which motivated Port Authority acquisition of the airport in the first instance, viz, the provision of public airport facilities.

- (2) Pan American is capable of and was prepared to agree to undertake a vigorous promotional program.

Pan Am's preliminary planning efforts depicted a new, modern General Aviation Terminal, two new major hangars for business and private aircraft, and a modular business aircraft hangar complex. These improvements, coupled with a program to extend the

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two major runways at Teterboro to 7,000 feet and other associated aviation improvements will make the airport much more attractive to potential users. With these improvements, Teterboro will be what the Port Authority itself has sought to make it, viz, one of the country's outstanding general aviation airports. The Port Authority was and is convinced that Pan American, with a fresh approach, the latitude of action inherent in private business methods, its worldwide contacts in industry and aviation matters, the extent of the resources it can employ, its in-depth staff expertise, its experience and know-how in advertising and promotional efforts, the corporate contacts generated and to be generated by its Business Jet Division and its program to offer a

complete operational support service* to business aircraft at its 118 stations throughout the world, can bring about this result in the very near future.

The sooner Teterboro is utilized to its maximum extent by general aviation aircraft the better. The relief early achievement of this result will bring

* Such service would include providing assistance in flight planning, fueling, customs clearance, traffic handling, dispatch, flight watch, food service, walk-around inspection, spare parts and help with language problems.

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in reducing congestion and delay at the other airports in the New Jersey-New York area will be, in the opinion of the Port Authority, of inestimable value to the public.

- (3) The proposed agreement would bring the convenience of airline service to the Bergen County - North New Jersey area.

Pan American had and has a direct interest in its own passengers originating in or destined to Northern New Jersey, an area some distance from Kennedy Airport.

The Port Authority is interested in the services available to these persons. At an early stage of its discussions with the Port Authority relating to Teterboro it expressed its interest in, and thereafter devoted its attention to, arranging for the provision of passenger and baggage check in facilities at Teterboro for its own and other airline passengers

and of regularly scheduled helicopter shuttle service between Teterboro and Kennedy Airport in helicopters operated by New York Airways. Early in March of 1967 the service was started. By appropriate tariffs, 28 foreign flag airlines and 9 U.S. flag carriers absorb all, or a portion of the N.Y. Airways/Teterboro/JFKIA fare for passengers connecting with their airline

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services. The convenience of this service for the residents of the North New Jersey-Bergen County area are obvious. To the extent it results in the alleviation of surface congestion at JFKIA it is also an advantage to the Port Authority as operator of that airport and to other members of the public using it.

As to present operations and facilities at Teterboro Airport see attachments B1, B2 and B3 entitled

B1 - "Fact Sheet - Teterboro Airport"

B2 - "Arriving Teterboro, Next Stop Manhattan"

B3 - "Facility Location Map - Teterboro Airport"

The fixed base operators at Teterboro Airport are:

Atlantic Aviation Corporation - Attachment C

General Aviation Company, Inc. - Attachment D

Safair Flying Service, Inc. - Attachment E

Teterboro School of Aeronautics, Inc. - Attachment F

The nature of each operation and the basic terms of the Port Authority leases or permits in effect with each operator are set forth in the

attachments noted opposite each name in the above list.

The landing fees presently in effect at Teterboro Airport are set forth in the Schedule of Charges which is Attachment G hereto.

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CAB Docket No. 19045 et al
Exhibit No. PNYA-1
Attachment A

THE PORT OF NEW YORK AUTHORITY
and
PAN AMERICAN WORLD AIRWAYS, INC.

Warren H. Goodman
Assistant Director of Public Relations
PORT AUTHORITY
Tel: 620-5411

Richard Barkle
Public Relations Manager
PAN AMERICAN
Tel: 973-4190

FOR RELEASE: Monday, 10:30 A.M.
August 9, 1965

Teterboro, N. J. Aug. 9 - A bright future for Teterboro Airport, which will bring the convenience of airline check-in service to Bergen County without bringing large airline aircraft to Teterboro, was outlined today at a press conference announcing plans for the revitalization and redevelopment of this 48-year-old airport. The program will be carried out under a 30-year agreement between The Port of New York Authority, which purchased Teterboro in 1949, and Pan American World Airways, which will operate the airport for the Authority beginning about January 1.

Governor Richard J. Hughes of New Jersey and Commissioner of Commerce Keith McHugh of New York, representing Governor Rockefeller, participated in the press conference at which the plans were announced by Juan T. Trippe, Chairman of Pan American, and James C. Kellogg III, Vice Chairman of the Port Authority.

The agreement provides expressly that Teterboro will continue to be operated as a public airport for general aviation. No scheduled airline operations will be permitted, except for helicopter service. The plans include a major improvement of the airport's facilities so that it can continue to serve this area as one of the country's outstanding general aviation

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airports. It also would become the main base of Pan Am's corporate plane division, which will soon begin marketing the new twin-engine eight-passenger Fan Jet Falcon to United States industrial corporations engaged in foreign trade.

Teterboro Airport now provides jobs for more than 1,000 people who earn more than \$8 million a year. It is estimated that the improvement of the airport will increase this employment and add an additional \$11 million a year to the local economy.

The convenience of airline service will be brought to the Bergen County area by the construction of a new terminal with facilities for passenger and baggage check-in and by providing New York Airways helicopter shuttle service to and from Kennedy International Airport. This will enable New Jersey travelers and businessmen taking long-distance air trips to avoid the time-consuming journey on the ground to and from Kennedy Airport.

Pan Am plans an improvement program to provide modern operating facilities, hangars for business aircraft, and the like. Pan Am also will make Teterboro a headquarters for its corporate plane division. The Fan Jet Falcon, which this division will sell, is an eight-passenger executive type jet, with a range of 2,000 miles and a cruise speed at altitude of over 500 miles per hour.

The Port Authority has invested \$10,500,000 of public funds in Teterboro. The Federal Aviation Agency has indicated that Federal Aid of approximately \$2 million will be available to apply to the

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Authority's cost of land acquisition at Teterboro. With such a grant, the net amount of the Authority's investment at Teterboro would be approximately \$8,500,000. On this basis, Pan Am would pay the Port Authority \$250,000 the first year, \$350,000 the second year, \$450,000 the third year and \$516,667 for each remaining year of the 30-year term. In addition, there would be an annual payment of ten per cent of gross receipts in excess of \$5,000,000 and a monthly payment covering the maintenance equipment and vehicles to be used by Pan American in carrying out its responsibilities.

Existing leases between the Port Authority and the various airport tenants will continue until their individual termination dates. The Control Tower will continue to be operated by the Federal Aviation Agency.

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CAB Docket No. 19045 et al
Exhibit No. PNYA-1
Attachment B1

FACT SHEET TETERBORO AIRPORT

OWNED AND OPERATED BY: The Port of New York Authority.

LOCATION: In the Boroughs of Teterboro and Moonachie in Bergen County, New Jersey. Twelve miles by highway from Times Square, Manhattan.

SIZE: 878 acres.

HISTORY: Opened about 1917 by Walter C. Teter. During World War I, North American Aviation operated a manufacturing plant on the airport. After the war, the airport served as a base of operations

for Anthony Fokker, the Dutch aircraft designer. During World War II, the airport was operated by the Army Air Force. It was purchased by the Port Authority on April 1, 1949, from Fred L. Wehran, a private owner. Federal Aviation Administration operates a major flight service station on the airport.

COST:

The Port Authority has invested over \$10,500,000 in the purchase, improvement and expansion of the airport.

EMPLOYMENT:

In 1966, 900 people were employed at the airport, with an annual payroll of \$7,000,000.

RUNWAYS:

An Instrument Runway 6-24, 5,000 feet long and 100 feet wide; Runway 1-19, 5,000 feet by 100 feet; a third runway, 14-32, 3,500 feet by 80 feet, is used only by small planes under certain wind conditions. Runway 6 is equipped with high intensity lighting, sequence flashing lights and threshold bar.

EXISTING STRUCTURES:

Eleven hangars
Gasoline storage tank farm
Administration Building
Maintenance garage
Aircraft maintenance and repair shops
Restaurant and cafeteria

AIR TRAFFIC:

	<u>1950</u> (First full calendar year of Port Authority operations)	<u>1965</u>	<u>1966</u>	<u>1967</u>
Plane Movements	183,841	264,940	274,664	279,246

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RECORD PAGES 1865-66, DESIGNATED FOR PRINTING AT THIS POINT, ARE CONTAINED IN DUPLICATE AT R. 1440-1443.

Exhibit No. PNYA - 1
 CAB Docket No. 190451
 ATTACHMENT B.3

CAB Docket No. 1904517
ATTACHMENT B.3

ATTACHMENT B.3

CAB Docket No. 19045 et al
Exhibit No. PNYA-1
Attachment C

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Atlantic Aviation Corporation

Permit AT-88

Term: Commenced - January 1, 1955

Expires - indefinite, terminable by either party on 30 days'
written notice.

Rental: \$0.02 for each and every gallon of aviation fuel and oil sold,
delivered or used by the Permittee.

Purpose Clause (Section 5): To receive, store, sell and deliver
at the Airport aviation fuel and lubricants as specified
in Special Endorsement 1 hereof.

Special Endorsement No. 1 - The privilege specified in Section 5 of
the Permit is limited to receiving, storing, selling and delivering
aviation fuel and lubricants purchased or received from approved
suppliers. For the purposes of this Permit the phrase "approved
suppliers" shall mean those suppliers of aviation fuel and lubricants
at the Airport whom the Port Authority has designated by written notice
to the Permittee.

Lease AT-136

Term: Commenced - Areas B, C and E - January 1, 1957 (see attached
Lease - page 2)
Areas A and D - April 1, 1958 (see attached Lease -
page 2)
Area B addition - January 1, 1958 (see attached
Supplement - page 1)

Expires: by document - March 31, 1961 - is now statutory month
to month tenant.

Rental: Presently as follows: Basic rental of \$60,956 per annum, plus 5% of gross receipts (excluding those from aircraft

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sales) in excess of \$1,219,120 per annum (exemption amount), plus a monthly percentage rental of $\frac{1}{2}\%$ of gross receipts from aircraft sales.

Purpose Clause: Generally speaking, a complete fixed base operation (see attached Lease pages 2 and 3).

Space: Hangar No. 2, a major portion of Hangar No. 3 and associated outside areas and facilities (see attached Lease, pages 1 and 2).

Permit AT-188

Term: Commenced - October 1, 1962

Expires - Indefinite, terminable by either party on 30 days' written notice.

Rental: \$533 per month (all gross receipts of the Permittee under the Permit shall be deemed to be "gross receipts" under Lease AT-136 for the purpose of determining the amount of the percentage rental payable under Lease AT-136).

Purpose Clause: (similar to that of Lease AT-136)

The Permittee shall use the space for the following purposes and for no other purpose whatsoever:

(a) Area A

(i) For the storage, maintenance and repair of aircraft, aircraft assemblies, aircraft accessories and aircraft radios, and any component part of the foregoing;

- (ii) For the sale of aircraft, aircraft assemblies, aircraft accessories and aircraft radios, and any component parts of the foregoing;
- (iii) For the leasing of aircraft;

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- (iv) For use in business and operations offices in connection with the operations of the Permittee.

(b) Area B

- (i) For the parking of automotive vehicles operated by the officers, employees, invitees and business visitors of the Permittee subject at all times to the prior and continuing approval of the Airport Manager;
- (ii) For the parking of aircraft;
- (iii) For the sale of aviation fuel including aircraft lubricating oil, subject to and in accordance with the provisions of any other agreements heretofore entered into between the Port Authority and the Permittee or under which the Permittee may be presently operating whereby such sales are regulated.

Space: Building No. 28 (Area A) and adjacent land (Area B).

Permit AT-200

Term: Commenced - July 1, 1964

Expires - Indefinite, terminable by either party on 30 days' written notice.

Rental: \$403.56 per month

Purpose Clause: For use as a business office in connection with the Permittee's operations at the airport pursuant to the use clause of Lease AT-136 and the purpose clause of Port Authority Permit AT-188.

Space: Office space on the second floor of the east leanto of Hangar
No. 3.

1878**Attachment D**

General Aviation Company, Inc.

Permit AT-196

Term: Commenced - April 1, 1963

Expires - June 30, 1968, terminable by either party on 30 days'
written notice.

Rental: Basic rental of \$1,057 per month plus $\frac{1}{2}\%$ of monthly gross
receipts from the sale of aircraft plus 5% of monthly gross
receipts (excluding those from aircraft sales) in excess of
\$14,680.

Purpose Clause:

The Permittee shall use the space for the following purposes and for
no other purposes whatsoever.

(a) Area A

- (i) For the sale of aircraft, aircraft parts and aircraft
assemblies;
- (ii) For the storage, maintenance and repair of aircraft, air-
craft assemblies, aircraft accessories and component parts
thereof and for the leasing of aircraft;
- (iii) For the sale of aviation fuel and aircraft lubricating
oil, provided, however, that such products are purchased
by the Permittee from a supplier furnishing such products
at the Airport in accordance with and pursuant to an agree-
ment with the Port Authority;

- (iv) For the parking of aircraft and for the non-exclusive privilege of conducting sightseeing and charter flights;
- (v) For the parking of automotive vehicles operated by employees and business guests of the Permittee;

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- (vi) For use as a business and operations office.
- (b) Area B
- For the parking of aircraft and the storage, maintenance and repair of aircraft, aircraft assemblies, aircraft accessories and component parts thereof.
- (c) The Permittee understands and agrees that a portion of the space described as "Area B" is and shall be subject to use of the same by George Welkey doing business as Radio Aircraft Company and those doing business with him for the purpose and only for the purpose of parking aircraft upon which the said George Welkey has contracted to perform radio maintenance and general radio repairs and the use of such portion of the space by the said George Welkey shall be limited to the actual requirements of his business and at such precise portion of the premises as the Permittee and the said George Welkey mutually agree upon or otherwise as determined by the Airport Manager.
- (d) The Permittee as a condition of this Agreement hereby agrees, that, to the extent of available space, it shall accept and furnish tie-down space to private flying clubs names of which will be forwarded to the Permittee by the Port Authority not less than thirty (30) days prior to the date upon which the

tie-down service is to be provided by the Permittee hereunder. The Permittee also agrees to furnish to such private flying clubs, upon their request, and depending upon the availability thereof, those products and services specified in subsections (i), (ii) and (iii) of subparagraph (a) of Special Endorsement No. 3.

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- (e) The Port Authority shall have the right at any time, upon thirty (30) days' written notice to the Permittee to designate the space shown in stipple on Exhibit A-2 as a common walkway for such persons as may, from time to time, be designated by the Port Authority to use such walkway; and the Port Authority shall also have the right on thirty (30) days' written notice to the Permittee to require that the Permittee's use of the space shown in crosshatching on Exhibit A-2 shall be in common with aircraft taxiing to and from areas other than the Permittee's premises and Taxiway 'D'.

Space: Hangars 6, 7 and 8 together with approximately 148,341 square feet of land.

Permit AT-205

Term: Commenced - January 1, 1965

Expires - Indefinite, terminable by either party on thirty days' notice in writing.

Rental: \$0.02 for each and every gallon of aviation fuel sold, delivered or used by the Permittee.

Purpose Clause (Section 5): To receive, store, sell and deliver at the

Airport aviation fuel and lubricants as specified in
Special Endorsement 1 hereof.

Special Endorsement No. 1 - The privilege specified in Section 5 of the Permit is limited to receiving, storing, selling and delivering aviation fuel and lubricants purchased or received from approved suppliers. For the purposes of this Permit the phrase "approved suppliers" shall mean those suppliers of aviation fuel and lubricants at the Airport whom the Port Authority has designated by written notice to the Permittee.

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Attachment E

Safair Flying Service, Inc.

Permit AT-86

Term: Commenced - January 1, 1955

Expires - Indefinite, terminably by either party upon 30 days' written notice.

Rental: \$0.02 for each and every gallon of aviation fuel and oil sold, delivered or used by the Permittee.

Purpose Clause (Section 5): To receive, store, sell and deliver
at the Airport aviation fuel and lubricants as specified
in Special Endorsement 1 hereof.

Special Endorsement No. 1 - The privilege specified in Section 5 of the Permit is limited to receiving, storing, selling and delivering aviation fuel and lubricants purchased or received from approved suppliers.

For the purposes of this Permit the phrase "approved suppliers" shall mean those suppliers of aviation fuel and lubricants at the Airport whom the Port Authority has designated by written notice to the Permittee.

Lease AT-201

Term: Commenced - August 1, 1964

Expires - Indefinite, terminable on a month to month basis.

Rental: \$37,000 per annum, payable monthly.

Purpose Clause: Generally speaking, a complete fixed base operation
(see attached Lease pages 2, 3 and 4).

Space: Hangar No. 1 and Building No. 32 together with approximately
165,891 square feet of land area.

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Attachment F

Teterboro School of Aeronautics, Inc.

Lease AT-67

Term: Commenced - August 1, 1952

Expires - January 31, 1956 and is extended from month to
month thereafter, terminable by either party
upon 30 days' written notice.

Rental: \$929 per month

Purpose Clause: "The Lessee shall use the premises for the following
purposes only and for no other purpose whatsoever:

- (a) As classroom space, for the training of mechanics and repairmen in connection with aircraft and aircraft accessories;
- (b) For the maintenance and repair of aircraft which do not exceed a maximum gross take-off weight of 12,500 pounds, as such aircraft weight is certificated by the Civil Aeronautics Administration or any successor agency having jurisdiction thereof;
- (c) For the maintenance and repair of aircraft accessories."

Space: Building No. 10 together with approximately 120,073 square
feet of ground area.

Lease AT-130

Term: Commenced - March 6, 1957 as to the site

November 15, 1957 as to the facility (Building 15)

Expires - November 30, 1977

Rental: (1) A ground (site) rental of \$6,000 per annum; plus
(2) a facility (Building 15) rental of \$29,244.12
per annum; plus (3) a percentage rental on annual
gross receipts (excluding those from aircraft sales)
as follows: 5% of gross receipts exceeding \$695,881.80

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but not exceeding \$927,842.40, 7½% of gross receipts
from \$927,842.40 to \$1,159,803.00, and 10% of gross
receipts which exceed \$1,159,803.00 (the terms of
this agreement recognize the existence of Lease AT-67,
and the beforementioned exemption amounts are reduced
in the event of cancellation of AT-67 - see page 3
of attached Supplement No. 1 to Lease AT-130); rentals
(1), (2) and (3) payable monthly; plus (4) a monthly
percentage rental of ½% of gross receipts from air-
craft sales.

Purpose Clause: Generally speaking, a complete fixed base operation
(see attached Lease pages 9 and 10).

Space: Building No. 15 together with approximately 129,723 square
feet of ground area.

Permit AT-206

Term: Commenced - January 1, 1965

Expires - Indefinite, terminable by either party upon 30 days' written notice.

Rental: \$0.02 for each and every gallon of aviation fuel and oil sold, delivered or used by the Permittee.

Purpose Clause (Section 5): To receive, store, sell and deliver at the Airport aviation fuel and lubricants as specified in Special Endorsement 1 hereof.

Special Endorsement No. 1 - The privilege specified in Section 5 of the Permit is limited to receiving, storing, selling and delivering aviation fuel and lubricants purchased or received from approved suppliers. For the purposes of this Permit the phrase "approved suppliers" shall mean those suppliers of aviation

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fuel and lubricants at the Airport whom the Port Authority has designated by written notice to the Permittee.

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TETERBORO AIRPORT

SCHEDULE OF CHARGES

For the Use of
The Public Landing Area

The operators of any aircraft using the public landing area at Teterboro Airport, except pursuant to the terms of a lease with The Port of New York Authority, shall pay for such use at the rate set forth herein.

I. PUBLIC LANDING AREA CHARGES

1. For each take-off of aircraft not exceeding 2,500 pounds of maximum gross weight for take-off..\$1.50

Operators of aircraft of this weight class may elect to pay a fee of \$10.00 per month or \$100.00 per year per aircraft for unlimited use of the public landing area in lieu of the charge provided above.

2. For each take-off of aircraft exceeding 2,500 pounds but not exceeding 7,500 pounds of maximum gross weight for take-off\$2.50

Operators of aircraft of this weight class may elect to pay a fee of \$15.00 per month or \$150.00 per year per aircraft for unlimited use of the public landing area in lieu of the charge provided above.

3. For each take-off of aircraft exceeding 7,500 pounds:—\$.02 per one hundred pounds of maximum gross weight for take-off, provided that the minimum charge for each such take-off shall be\$2.50

4. Maximum gross weight for take-off shall mean the maximum gross weight which an aircraft may lawfully have, at the time of leaving the ground at any airport in the United States (under the most favorable conditions which may exist at such airport and without regard to special limiting factors arising out of the particular time, place or circumstances of the particular take-off, such as runway length, air temperature, or the like). If such maximum gross weight is not fixed by or pursuant to law, then said phrase shall mean the actual gross weight at take-off.

5. Such charges shall not be payable in connection with the following:

- a. "Touch-and-go" and similar operations in which the aircraft comes in contact with the runways or ground and, without coming to a stop, thereafter resumes the flight by leaving the ground from the same runway and in the same direction, provided that the aircraft originates and terminates its flight at the air terminal and provided, further, that the initial take-off is subject to such charges.

- b. Test flights which originate and terminate at the air terminal, provided:

- (1) The repairs and/or work under test have been performed by a Port Authority permittee at the air terminal;
- (2) No intermediate landings take place at other air terminals; and
- (3) Not more than two hours elapse between the time an aircraft is duly authenticated for the test flight by the Port Authority permittee performing the repairs and/or work and the time the aircraft returns to the air terminal.

- c. In the event an aircraft departs from the air terminal for another destination, which aircraft, without making a stop at another airport, is forced to return to and land at the air terminal because of meteorological conditions, mechanical or operating causes or for any similar emergency or precautionary reason, such charge shall not be payable in connection with the subsequent departure of such aircraft or a substituted aircraft; provided, however, that on such subsequent departure the aircraft or substituted aircraft is destined for the same point and transports the same or substantially the same load.

II. FREE USE OF PUBLIC LANDING AREA

Notwithstanding the provisions of any Schedule of Charges heretofore adopted for the use of Teterboro Airport, no charge shall be made for the use of such areas at such Air Terminal by the following aircraft:

1. Aircraft operated by the Federal Aviation Agency or the Civil Aeronautics Board.
2. Aircraft owned by the State of New York or the State of New Jersey or City of New York, or the City of Newark.
3. Aircraft operated by the United States Coast Guard when engaged in the execution of search and rescue and law enforcement duties.
4. Aircraft owned or chartered by the Port of New York Authority.
5. Aircraft operated under orders of the Civil Air Patrol when engaged in the execution of official aircraft search and rescue missions or in officially ordered practice aircraft search and rescue missions.

III. CREDIT ARRANGEMENTS AND MONTHLY REPORTS

All charges under this Schedule of Charges shall be payable in cash as they are incurred unless credit arrangements satisfactory to the Treasurer have been made in advance.

CAB Docket No. 19045 et al
 Exhibit No. PNYA-1
 Attachment I
 Page 1 of 3

1904

Direct Air and Ground Transportation Services
 From Teterboro Airport to Manhattan and
 Newark, LaGuardia and Kennedy Airports

AIRPORT COACH (Carey) operates to:

<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
West Side Airlines	20 minutes	\$1.50
Terminal in Manhattan		

PUBLIC BUS - Manhattan Transit Corp. Bus #51, #52 or #53

operates to:

<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
The Port Authority Bus	20 minutes express;	\$.60
Terminal in Manhattan	30 minutes local	

TAXI - Taxis can be summoned from nearby Hasbrouck Heights or Hackensack to pick up passengers at Teterboro Airport. Yellow Cab Co. in Hackensack offers service from Teterboro to:

<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
Midtown Manhattan	55-60 minutes (7-9A.M. 4-7P.M.)	\$10.00
	35-40 minutes (non-rush hour)	
Newark Airport	55-60 minutes (7-9A.M. 4-7P.M.)	\$10.00
	35-40 minutes (non-rush hour)	

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<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
LaGuardia Airport	1 hr., 15 min. (7-9A.M. 4-7P.M.)	\$12.00
	1 hr. (non-rush hour)	
Kennedy Airport	1 hr., 45 min. (7-9A.M. 4-7P.M.)	\$17.00
	1 hr., 20 min. (non-rush hour)	

RENTAL CAR - An Avis Rental Car (also Hertz) can be secured at Teterboro. The car can be dropped off at:

<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
Midtown Manhattan	35-40 min. (non-rush hr.)	\$20.00 minimum
Newark Airport	35-40 min. (non-rush hr.)	\$20.00 minimum
LaGuardia Airport	1 hour (non-rush hr.)	\$20.00 minimum
Kennedy Airport	1 hr., 20 min. (non-rush hr.)	\$20.00 minimum

CHAUFFEURED LIMOUSINE - Teterboro Airport Ground Transportation, Inc. provides uniformed drivers in Cadillac limousines to:

<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
Midtown Manhattan	$\frac{1}{2}$ hour (non-rush)	\$16.00
Newark Airport	$\frac{1}{2}$ hour (non-rush)	\$11.00

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<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
LaGuardia Airport	45 min.-1 hr. (non-rush)	\$17.50
Kennedy Airport	1 hr., 10 min. (non-rush)	\$22.50

SCHEDULED LIMOUSINE - The New Jersey and New York Airport

Limousine, Inc. operates to LaGuardia and Kennedy Airports. Western Airbrook Limousine offers service to Newark:

<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
Newark Airport	30 min. (non-rush)	\$5.50
LaGuardia Airport	1 hr. (non-rush)	\$5.50
Kennedy Airport	1 hr., 20 min. (non-rush)	\$16.00

HELICOPTER - New York Airways offers helicopter service to:

<u>PLACE</u>	<u>TIME</u>	<u>COST</u>
Midtown Manhattan	7 minutes	\$ 6.00
Kennedy Airport	21 minutes	\$12.00

AIR TAXI - Air taxis can be chartered. There are no direct scheduled Teterboro - Kennedy, Teterboro - LaGuardia, Teterboro - Newark, or Teterboro - Midtown Manhattan services.

SOURCE: Individual transportation operators.

CAB Docket No. 19045 et al
Exhibit No. PNYA-1
Revised Attachment J

1907

Aircraft Operations at Port Authority Airports - 1967

	1967 Aircraft Operations (Landings plus Takeoffs)			
	<u>Newark</u>	<u>LaGuardia</u>	<u>Kennedy</u>	<u>Teterboro</u>
<u>Airline</u>				
Scheduled All-Cargo	8,121	7	22,942	-
Other Airline	154,240	173,674	331,963	-
<u>General Aviation</u>				
Air Taxi (Scheduled plus non-scheduled)	29,655	41,182	38,419	5,304
Business and Private	37,758	72,076	25,090	151,114
Local School	-	-	-	122,214
<u>Government</u>	<u>606</u>	<u>2,604</u>	<u>942</u>	<u>614</u>
TOTAL	230,380	289,543	419,356	279,246
Helicopter (not included in above totals)	21,049	22,996	39,226	5,266

A survey conducted by the Port Authority in 1965 indicated that of the total general aviation passengers landing at the three airline airports 17.0 per cent at Newark, 4.5 per cent at LaGuardia and 75.8 per cent at Kennedy indicated they were making an airline connection. A survey conducted by the Port Authority in the two weeks immediately after Labor Day in September 1967 indicated that of the total general aviation passengers landing at the three airline airports 32.8 per cent at Newark, 11.6 per cent at LaGuardia and 77.3 per cent at Kennedy indicated they were making an airline connection.

SOURCE: Port Authority Records.

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INTRODUCTION AND CONCLUSIONS

As indicated in Chapter I of the following report, The Port of New York Authority has been engaged almost continuously since 1957 in studies of the need for and possible locations of a new major airport to serve the metropolitan region of New York and northern New Jersey. On July 29, 1965, after receiving the Port Authority's most recent airport site studies, Governor Nelson A. Rockefeller of New York and Governor Richard J. Hughes of New Jersey requested the Port Authority on behalf of and as the joint agent of the two States to make still another effort to find a definitive site for the region's desperately-needed new airport. Governor Rockefeller directed the Port Authority specifically: "to continue to press forward with the search for a suitable airport site," and to report to him "so that an authorization for a new airport can be effectuated in the near future."

The Port Authority noted in its 1961 Report that:

"The Port Authority as an interstate agency is the creature of the Legislatures of New Jersey and New York. As we have stated in the course of the current discussion of the need for such an additional airport, the Port Authority has no power whatsoever to carry out the recommendations . . . of any definitive report of our studies of this problem. Our duties in this field under the Port Compact are simply to study and to report. This we have done to the best of our ability. But the only authority in the world that can authorize the construction of a new terminal airport anywhere in this metropolitan area is the authority of the people through their elected representatives in Trenton and in Albany."

Although a number of reports evaluating specific sites were made in 1963, 1964 and 1965, the Port Authority has not submitted a comprehensive report on the overall problem since May 1961. In response to the Governor's directive therefore, it was timely and appropriate to review all previous findings and conclusions in the light of air traffic trends, public interest and necessity, and in the light of aeronautical and technological progress since 1961.

Chapters II through VIII of the following report set forth the results of that review. They include:

- A review of the economic importance of adequate and essential air transportation to the basic economy of New York and northern New Jersey. (Chapter II)

- A complete re-evaluation of the region's future air traffic demand, taking into account the results of recent studies by others, such as the Civil Aeronautics Board, the Federal Aviation Agency and the Air Transport Association of America. (Chapter III)
- A re-study of the capacity of existing airports and of all possible means of increasing that capacity, and of technological developments which might permit those airports to handle more traffic. (Chapter IV)
- An analysis of all suggestions that future air traffic demand, or a substantial part thereof, might be satisfied without adding to airport capacity because of developments such as larger conventional aircraft, introduction of new types of aircraft (such as Vertical Take-off and Landing or Short Take-off and Landing), developments in other forms of transportation (such as high-speed rail service), and the like. (Chapter V)
- An examination of the practicability of various suggestions which have been made for increasing the capacity of existing airports for airline operations by diverting general aviation traffic to other airports. (Chapter V)
- A re-appraisal of the considerations regarding airport accessibility in the light of new information on future highway plans and recent trends in ground transportation, including such proposals as the use of high-speed railroads, convertible road-rail vehicles, hydrofoils, monorails and ground effect machines. (Chapter VII)
- An analysis of the prototype airport plan to determine whether design criteria such as runway length, total land area and the like should be revised to meet safety, aircraft noise and efficiency considerations. (Chapter VI)
- A re-evaluation of each site previously studied to the extent warranted by any changes which have taken place since the last full study of that site was completed. (Chapter VIII, pages 41 through 46)
- An evaluation of all additional sites which have been suggested. (Chapter VIII, pages 46 through 50)

For the reasons set forth in detail in the report, all of these studies lead to the following conclusions:

- 1—Annual air passenger demand in the New Jersey-New York metropolitan region is ex-

pected to increase from 25.8 million air travelers in 1965 to 53.5 million in 1975 and 65 million in 1980. The aircraft movements required to accommodate this future demand, plus all-cargo and general aviation plane movements, will determine airport requirements. Future peak hour IFR air traffic demand at the three existing major metropolitan airports is estimated to be: 213 plane movements in 1970; 247 in 1975; and 302 in 1980.

2—After all practicable measures have been taken to increase the capacity of the three existing airports, the peak hour IFR capacity will increase to a maximum of 185 movements during the 1970 to 1980 period.

3—Therefore, the air traffic demand in the New Jersey-New York region will exceed the capacity of Kennedy, LaGuardia and Newark airports before 1970, when those airports will reach their maximum practicable capacity. Even today, air traffic exceeds the present operating rate of these airports and results in excessive delay and congestion in peak hours.

4—The only practical way to meet the public demand for adequate, safe and economically essential air service into and out of the metropolitan region of New York and northern New Jersey is to construct a new major airport in a location which is: a) feasible from an aeronautical standpoint, b) realistically accessible to the region's traffic generating centers, and c) economically practicable.

5—There have been no developments which would justify a change in the Port Authority's technical and engineering conclusions regarding any of the sites evaluated in its reports of 1959, 1961, 1963 and 1965.

6—None of the additional sites which have been suggested and which the Port Authority has reviewed meet the criteria for a new major airport capable of serving the urgent need of northern New Jersey and New York for adequate, dependable and essential air transportation.

7—The Port Authority sees no possibility of any major technological breakthroughs which would change these conclusions.

The answer to this serious problem, therefore, remains the same as that submitted to the two States in the comprehensive report of May 1961.

After that report was submitted, the Legislature of the State of New Jersey passed a bill which would have prohibited the construction of any airport for use in interstate or overseas air transport in the counties of Morris, Hunterdon, Somerset, Union, Essex, Warren or Passaic. Although this bill did not become law, it is the most recent expression of opinion by the Legislature of the State of New Jersey and, as a matter of propriety, precludes any recommendation by the Port Authority for construction of a major airport in the geographic area delineated by the State Legislature. The engineering and physical facts, and the fundamental economic interest of all the people of this great and growing metropolitan area, preclude any other recommendation.

All of the Port Authority's studies have confirmed the fact that only a new major airport could supply the additional capacity which will be required in the immediate years ahead. The 1959 report, based on air traffic forecasts through 1975, concluded that the need would exist by 1965. Subsequent studies, including the present one which carried the forecasts to 1980—as well as actual experience at the airports with 1965 and 1966 traffic—have confirmed the need beyond all doubt.

With the loss of five years, a new airport cannot now be completed before 1975. To provide all possible capacity pending the availability of such an airport, the Port Authority has been working continuously to expand the existing airports to their maximum practicable capacity, and has expended hundreds of millions of dollars to that end. A runway extension and terminal program has just been completed at LaGuardia Airport as part of a \$120,000,000 redevelopment program at that Airport. A complete expansion and redevelopment program at Newark Airport, which will cost approximately \$200,000,000, is well under way. At Kennedy International Airport, close to \$90,000,000 has been spent over the past five years to maximize the capacity of that Airport. Nevertheless a further long-range, multi-million-dollar program to expand the 655-acre Terminal City at Kennedy Airport to 837 acres was announced in September as the latest step in the continuing major construction at that facility.

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The Port Authority will continue these efforts. It will continue to study and restudy every conceivable plan which can be devised and will implement without delay any such plans which are operationally and economically feasible and practicable. Only through such action and through the completion of a new airport can the region maintain its leadership in air transportation.

It should be mentioned that a hopeful note has just been struck in Washington which offers some possibility that the Federal government may contribute to a solution of the airport capacity problem in the New York-New Jersey metropolitan area as well as in other areas of the country. In November, President Johnson established an airport planning task force headed by the Secretary of Transportation, Alan S. Boyd, and the Chairman of the Civil Aeronautics Board, Charles S. Murphy. The group was set up by the President be-

cause "The present system of airports is becoming inadequate rapidly, especially in major metropolitan centers." The President has asked the task force "... to come up with a new approach for planning and developing a national system of airports."

The Port Authority will, of course, cooperate with the President's task force and has offered to make available to it all the information and expertise accumulated during our studies of the subject since 1957. We hope the recommendations of this study group will be of assistance to the two States in their continuing efforts to cope with their airport problem.

The consequences to the New York-New Jersey metropolitan region of continued inability to provide for its future air transport needs will be an economic catastrophe for its people and its commerce.

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I

HISTORY

If the New Jersey-New York area is to grow and thrive, it is absolutely essential that adequate air transportation facilities be provided to serve the people of the region.

In the past, the regional airport system has had sufficient capacity to serve the area's air traffic demands. However, as traffic volumes continue to increase they approach and at times today exceed the operating rate of the airport system. It becomes more and more evident that the regional system is rapidly approaching the day when its airports will be incapable of meeting the demand. Further, the time remaining in which to deal effectively with this problem has steadily diminished.

The search for a solution becomes more frustrating as time passes. Following seven years of intensive study and analysis, there has been no mutually accepted answer. With the growth of air transportation the predicament becomes more acute. Airways become more congested with a greater volume of flights. Airports become increasingly filled with air traffic. The air transportation system of the region becomes more and more saturated, more often, and for longer periods of time. The aviation industry will be fortunate indeed if, during the years it takes to develop a new major airport, it does not become increasingly necessary to impose two- or three-hour delays upon air traffic to

sure of air traffic. These include passenger terminals, baggage check-in and claim systems, ground transportation services, parking lots, roadway networks on and serving the airports, cargo handling facilities and the like.

These airport ground facilities, developed to serve passengers and cargo shippers, have, in a very real sense, points of delay and congestion where the level of service falls below acceptable standards. There have been instances during certain busy peak periods today where these types of facilities have become overcrowded and congested, causing inconvenience and delay quite parallel in effect to the incidents of aircraft traffic tie-ups.

As an agency of the States of New York and New Jersey, the Port Authority has a clear obligation to study these problems and to report to the two States. Under the 1947 concurrent legislation of the two States, the Port Authority must conduct these analyses to meet the needs of all of the residents of the Port District, rather than to act as representatives for any special aviation or air transportation group. This legislation states:

"The effectuation . . . and operation of air terminals by the Port Authority is and will be in all respects for the benefit of the people of the

prevent a disaster similar to the two mid-air collisions of airline aircraft that have occurred in this area within the last seven years.

The effect of air traffic growth and the frustrating dilemma it has now commenced to impose on the residents and on the commerce, business and labor of the region was predicted in the variety of knowledgeable statements, reports and studies completed through the years.

As the problem of providing adequate airport facilities has developed through the years, primary attention has been focused on the capacity of air traffic and airport systems in terms of aircraft movements that can be accommodated. In the New Jersey-New York metropolitan region, the world's busiest air traffic area, this is important because one of the key ways in which air terminal capacity can be increased is by improving the systems' ability to accept a greater number of flights during busy times. By improving the rate of flow of aircraft along the region's enroute airways and approach and departure routes, by increasing the capability of the air traffic control and airport systems, more flights can be served during peak periods.

It should also be recognized that there are other airport facilities which have felt the increasing pres-

states of New York and New Jersey, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions; and the Port Authority shall be regarded as performing an essential governmental function . . . in carrying out the provision of the law . . ."

Beginning in 1957, The Port of New York Authority made forecasts based on air travel market surveys which indicated a constant and rapid increase in air passengers who would be moving through the region in what was then the distant future. Nearly 25 million passengers were forecast at that time for 1965 and 45 million for 1975. The validity of this forecast is evidenced by the record. The Port Authority airports served 25.8 million air travelers in 1965.

The Port Authority's analysis of this 1957 forecast indicated the advisability of an evaluation of the region's airport requirements in fulfillment of the Port Authority's basic responsibility to plan for the terminal needs of the region. Extensive studies were then under way for the complete reconstruction, redevelopment and modernization of LaGuardia and Newark Airports and the continued improvement and development of Kennedy Airport. Nevertheless the 1957 forecasts clearly indicated that the capacity of the ex-

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TRANSCRIPT OF HEARING

* * *

MR. SCHOTT: Yes, Mr. Examiner. As it has indicated, Pan American has expressed a willingness to accept the condition set forth on page 7 of the Exhibit PA-A.

The off the record discussion suggested the possible desirability of treating that proposal as an amendment to Pan American's applications in this proceeding, and I hereby state on behalf of Pan American that the applications in Dockets 19045 and 19046 should be regarded as so amended.

EXAMINE R WISER: Is there any objection to that? I hear none, and we will go forward on that basis.

* * *

2235

TESTIMONY OF JOHN R. WILEY

DIRECT EXAMINATION

BY MR. MULHERN:

Q Will you please state for the record your full name and office address?

A John R. Wiley, 1110 Eighth Avenue, New York, New York.

Q Are you employed by the Port of New York Authority,
Mr. Wiley?

A I am.

Q In what capacity?

A As director of aviation.

* * *

2236

EXAMINER WISER: As I understand it, the persons
requesting to cross-examine are AOPA and Bureau Counsel.

MR. SIMPSON: I have questions, too, Mr. Examiner.

EXAMINER WISER: You do, too?

MR. SIMPSON: Yes.

MR. STEEGE: I may have a question, Mr. Examiner,
for purposes of clarification.

EXAMINER WISER: I will let the ones who requested
the witness proceed first.

Mr. Yodice, you may question the witness.

CROSS-EXAMINATION

BY MR. YODICE:

Q Mr. Wiley, on page 1 of Exhibit No. PNYA-1, there
is the statement that "Pan Am is qualified to promote and
fully develop Teterboro Airport over the shortest interval of
time."

I assume that this was the consideration you had in

determining that this would be an agreement which would be in the public interest?

A Yes, that is true.

Q Were there any other considerations which entered into the desirability of this agreement?

A No. I think they are pretty well set forth in the paragraph that is indicated as (1) beginning at the bottom of page 1 and going over to page 2 of Exhibit PNYA-1.

2241

EXAMINER WISER: Would you start out answering the question, and then going to your general statement?

MR. YODICE: There is the statement, sir, in Port of New York Authority Exhibit No. 1 that Teterboro will continue --

EXAMINER WISER: What page?

MR. YODICE: Page 1.

-- that Teterboro will continue as a public airport for general aviation.

In addition to that conclusionary statement I think there is the flavor throughout that this will be a public airport and that the Port Authority says it will be a public airport.

We have the concern, sir, and we would like to find out what the facts are with respect to whether this airport

will continue to be available to the whole spectrum of general aviation type aircraft, including light aircraft and student operations. We felt that the rate structure which is contemplated will discriminate against light aircraft, and we would like to explore that to find out what the fact is.

2242

MR. MULHERN: Mr. Examiner, the rate structure proposed in the TAMS report which is the exhibit to which Mr. Yodice is referring is a rate structure suggested to Pan Am by consultants hired by Pan Am. It is not a rate structure proposed by the Port of New York Authority. The Port of New York Authority didn't prepare it.

If Mr. Yodice feels it is discriminatory I suggest it is a matter to be discussed with Pan Am. At this point in time this witness is being cross-examined on a statement that this would be an airport open to the public. The agreement before the Board so requires.

We did not produce this study nor do we sponsor it. I suggest that cross-examination is not proper.

EXAMINER WISER: Let's see what the cross-examination -- what the question is. I think I know what it is going to be, but proceed to propound it.

BY MR. YODICE:

Q Are you familiar with the proposed rate structure on page 39 of attachment No. 1?

A I have just read it.

Q Prior to today were you unaware of that rate structure?

A I hadn't studied it in any detail at all.

2249

Q Has the Port Authority ever considered allowing scheduled air carrier operations at Teterboro as a relief valve for your other three air carrier airports?

A No, we have not.

Q Without considering the agreements you have with Pan American, is there any law or any binding policy that would prohibit such use in the future?

A No, not that I know of. Incidentally, in my

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last answer, I, of course, excepted the helicopter services which have been operating from there. I know of none that would prohibit such.

Q If the congestion at Kennedy, Newark and LaGuardia got so bad, might the Port Authority consider opening up Teterboro for scheduled air carrier operations?

MR. MULHERN: Mr. Examiner, just so the record

will contain it, I would like to indicate that I object.

This is not cross-examination of the Port Authority's Information Response.

EXAMINER WISER: It is getting a little beyond the direct.

MR. ROSENTHAL: On page 8 they say they have always regarded Teterboro as a general aviation airport. I was just exploring that.

That is all.

EXAMINER WISER: Proceed.

BY MR. ROSENTHAL:

Q Would you answer my question.

A May I have the question read.

(The Reporter read the pending question.)

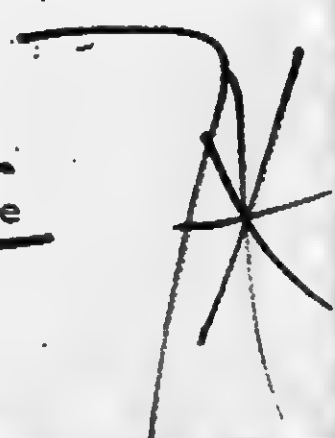
THE WITNESS: It is an awfully hard question to answer. I really don't know whether we would consider it or not. It would depend on the circumstances at the time and whether any relief could be afforded by the opening up

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of Teterboro to schedule airline traffic.

BY MR. ROSENTHAL:

Q Has the Port Authority made a plan as to how they will improve and operate the airport other than the runway-taxiway improvement should the agreement be dis-



approved?

A If the agreement should be disapproved, we do not have any specific plans that we could pull off the shelf at this moment as to how the aircraft would be improved and developed, but we would immediately get busy to produce such plans and make such plans in order to keep the airport open for the purposes stated.

Q Would a proposed development such as the TAMS proposal be something like what the Port Authority might do?

A It could be similar to that. Each consultant has his own pride of authorship or each firm has its own pride of authorship, so it might be different.

Q If the agreement is disapproved, the Port Authority would then seriously consider extensive development.

A Oh, yes. Absolutely.

Q Does the Port Authority have sufficient resources to achieve such a development should it become necessary?

A Yes, I am sure we do. I think the reason why we proposed to go forward with the Pan American arrangement is

2252

because we believe that Pan American is qualified to promote and fully develop Teterboro Airport over the shortest interval of time.

Q Does that implicitly imply that the Port Authority is not qualified to promote and develop Teterboro over the shortest period of time?

A No, we just think Pan American can do it quicker.

Q In the TAMS report, the consultants forecast a 12 percent rate of return on Pan American's investment. Is the Port Authority not interested in obtaining such a return on its investment?

MR. MULHERN: Mr. Examiner, again I object. The TAMS report is not a Port Authority exhibit. This is not proper cross-examination. There is nothing in the Information Responses on this subject.

EXAMINER WISER: You have had enough. I think the question goes beyond the scope of proper cross.

MR. ROSENTHAL: I withdraw it.

BY MR. ROSENTHAL:

Q Has the Port Authority considered increasing landing fees at Teterboro?

A No, we have not.

Q If the Port Authority were to embark on substantial development of the facilities at the airport, would you contemplate an increase in landing fees?

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A That would depend on the results of the plan and

the evaluation of the plan, the costing of the plan, the costing of the likely revenues in order to make it self-supporting. So, I can't answer that until I had such a plan before me and costed it out.

Q Am I then to understand that the Port Authority's setting of landing fees is based solely on making particular operations self-supporting or as one of the revenue items?

A Generally, this is the mandate under which we operate by action of the legislation of the two States.

Q When are the runway and taxiway improvement proposed to be finished?

A The end of 1968 I think for the first phase of it and mid or late 1969 for the second phase.

Q Were the Board to disapprove the agreement today, do you have any idea how long it would take the Port Authority to complete substantial improvements to the terminal operations?

A I should guess it would be a matter of two to three years, something like that. I place special stress on the word "complete" in that regard.

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Q During the cross examination of the TAMS witness AOPA tried to point out that the TAMS report and ideas may be oriented against lighter general aviation aircraft.

Were the Port Authority to develop Teterboro on its own, would it make such development to serve all aspects of general aviation?

A I think that would be the basic premise on which the developer would go forward. We always have to look at the question of congestion in the New York-New Jersey Metropolitan Area, and if there be congestion, what part of the aviation picture can be moved elsewhere with least disruption to the total system of traffic. So, to that extent I would qualify my answer that says yes, it would be our intention to develop Teterboror Airport as a general aviation airport for all users.

Q Even if the Port Authority and Pan American develops and improves the facilities at Teterboror, from which other Port Authority Airport would you anticipate the most diversion?

MR. MULHERN: Mr. Examiner, I object. This is not proper cross examination of this witness.

The ground for my objection is it doesn't say any place in these information responses that the Port Authority expects any diversion from any Port Authority Airport.

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MR. ROSENTHAL: The reason I am asking the question is the issue of congestion has been raised. Mr. Wiley

has talked about congestion. I am trying to find out how this is going to relieve congestion, if at all. Certainly, it is something the Board is interested in.

EXAMINER WISER: Can you answer this question, Mr. Wiley?

THE WITNESS: Yes, I can. I don't know from which airports it would come primarily.

BY MR. ROSENTHAL:

Q Do you consider at present Teterboro is "attractive to the public for use" now?

A I don't know what you mean by the public. Are you talking about general aviation aircraft or airline aircraft or helicopters or what? I am not sure I understand what you mean by the term "public."

Q It is on page 8 of PNYA-1.

A I see what you mean. I think it is reasonably so, but it could be better. That is why we have been engaging in these discussions with Pan American.

Q Can I assume that because of your engagement in these relationships you have not expended any or embarked on any massive program of improvement, is that correct?

A Yes. During the pendency of this agreement for the reasons I stated earlier, that we thought Pan American

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could do an overall development of the airport in a shorter period of time, for those reasons we had not proceeded with development of our own in any extensive scale.

Q Does the Port Authority have the manpower and the facilities and the expertise to embark on a rather rapid improvement of the facilities at Teterboro should it become necessary?

A Yes, and if at any given time our manpower and personnel were occupied, we know where we can get consultant help to tide us over such a hump.

Q Are there available somewhere in the labor and management pool people that you could hire to fill spots that you felt were needed?

A We have never found difficulty in doing it in the past, and I would assume we wouldn't have difficulty in the future.

Q Are the Port Authority's public relations facilities sufficient and well-organized enough to promote a new Teterboro.

MR. MULHERN: Mr. Examiner, I hate to be boring, but this is not proper cross examination.

MR. ROSENTHAL: May I answer that?

EXAMINER WISER: No, I know what your answer

will be. I am going to let you ask the question. Do you have the question in mind. The answer is yes?

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THE WITNESS: The answer is yes.

BY MR. ROSENTHAL:

Q If the Port Authority and not Pan American continues to operate Teterboro, is it possible for New York Airways or some other helicopter or lease haul operator to establish a terminal so that people in the New Jersey area can go to Teterboro and check for their airline connections at the various air carrier airports?

A I think the agreement provides that such facilities would be made available by Pan American to all comers if this agreement is approved, and I am certain as well if this agreement were disapproved, the Port Authority would make similar arrangements that would be open to all comers.

Q Several years ago when apparently the Port Authority was having public discussions as to what to do with Teterboro, did any other corporation other than Pan American make overtures that it might be interested in operating Teterboro?

A Not to my recollection.

Q Did the Port Authority go to other corporations

asking them whether they would be interested in operating Teterboro?

A I don't recall that we did.

Q If agreement should be disapproved, would the

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Port Authority be receptive or look for another company to operate Teterboro in a manner similarly as Pan American has proposed.

A If the proposed agreement were disapproved,
I think the Port Authority would entertain any proposals
that anybody would make in respect to such an operation as
a part of the normal course of doing business. I can't
answer the question as to whether or not we would aggressively
go out and seek others. I just don't know that.

Q Am I correct that there was no competitive or
open bidding for the type of proposal that Pan American is
proposing here?

A That is correct.

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MR. ROSENTHAL: Section 10(c) which to my reading gives the Port Authority veto power over any agreement for use or occupancy by others than Pan American at Teterboro.

My question is this: Has the Port Authority

established standards which it might use in granting or not granting approval or will it publish standards?

MR. MULHERN: Mr. Examiner, I object to the question. The agreement is before the Board, the text of the agreement speaks for itself, and the agreement makes no reference to standards. There is no reference to standards in the information response.

The witness is not a lawyer. I object to the line of questioning. I don't believe it is proper cross examination. I don't think that the witness is qualified to interpret the agreement as a legal document.

MR. ROSENTHAL: I am not asking the witness to interpret the document. I am only asking whether he knows whether the Port Authority has set up any standards.

EXAMINER WISER: Have already?

MR. ROSENTHAL; Have already or are contemplating doing so.

EXAMINER WISER: Do you understand the question, Mr. Wiley?

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THE WITNESS: Yes, I do, Mr. Examiner.

EXAMINER WISER: You may answer. The objection is overruled.

THE WITNESS: Just a moment, sir, if I may.

EXAMINER WISER: Surely.

THE WITNESS: I know of no standards that have been set up nor of any proposal at the moment to establish standards.

BY MR. ROSENTHAL:

Q Do you know whether Port Authority's enabling act set such standards or gave them guidance?

MR. MULHERN: Mr. Examiner, I do object.

EXAMINER WISER: Sustained.

BY MR. ROSENTHAL:

Q Mr. Wiley, this agreement has numerous clauses that Pan American shall not engage in unfair or unduly discriminatory practices. Is it the policy of the Port Authority that if this agreement is approved and during the pendency of the continuation of operations under the agreement that the Port Authority will vigorously enforce those provisions with whatever means are available?

A I take it for granted that in entering into an agreement that has provisions worked out between two agencies that each will do its best to live up to the provisions of that agreement. If that is so specified in the agreement,

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yes, we will do that.

Q Mr. Wiley, does the Port Authority have now or does it contemplate establishing standards as to what

constitutes unjust discrimination and anti-competitive effects?

MR. MULHERN: Mr. Examiner, I object.

EXAMINER WISER: Sustained.

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* * *

BY MR. SIMPSON:

Q On page 6 you say if the agreement is disapproved the Port Authority will continue to operate Teterboro Airport. Can we assume that the Port would do the best job it could within its ability?

A Yes.

Q And back on page 3 you say at the bottom of the page, "The sooner Teterboro is utilized to its maximum extent by general aviation aircraft, the better."

I assume that statement applies whether Pan American makes improvements or whether the Port Authority makes improvements.

A I would say that's true, yes.

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Q Isn't it true that as early as 1964 Atlantic Aviation requested approval from the Port Authority to build new hangar space and make other improvements on the airport?

MR. MULHERN: Mr. Examiner, I renew my objection I previously made to Mr. Rosenthal's cross examination.

This is not proper cross examination of this witness.

EXAMINER WISER: What part of the direct does this concern?

MR. SIMPSON: Mr. Examiner, there's a great deal of statements in PNYA-1 as to the alleged necessity for the improvements that Pan American will be making. I think it is very relevant whether these improvements can be made in other ways which don't have the problems that are inherent in a major airline operating this airport. I think if there is a possibility those improvements could be made by someone else and if other people have in fact made proposals, I think this record should reflect it, because then the public interest could be served without --

EXAMINER WISER: All right, the objection is overruled.

THE WITNESS: May I have the question?

(Record read.)

THE WITNESS: There were several proposals at various times over the last several years, I think, from some of the tenants on the airport for making improvements in their lease-hold facilities. These things go on all the time when you are operating an airport. Some of them come to fruition and some don't.

So, I would say it is entirely likely. I don't

remember the specific circumstances. I think it is entirely likely that Atlantic may have made such a proposal.

BY MR. SIMPSON:

Q Do you recall if those proposals by Atlantic included hangar facilities, terminal facilities, lounge and so forth?

A I don't recall specifically what they included, no sir.

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EXAMINER WISER: Pan American.

BY MR. STEEGE:

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Q Mr. Wiley, you indicated that if the agreement with Pan Am were disapproved by the Board that you would continue to operate the airport. Has the Port Authority made any decision as to what facilities or construction would be undertaken at Teterboro in that eventuality?

A No, we have not.

Q And you have made no commitment that any would be undertaken? You do not make any commitment here?

A No.

MR. STEEGE: Thank you.

That is all I have, Mr. Examiner.

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* * *

BY MR. ROSENTHAL:

Q Just a second ago Pan Am asked you if there were disapproval of the proposed agreement has the Port Authority made a commitment to develop Teterboro's operational facilities, and I believe you answered that No.

A I'm sorry, I read that did we have any specific

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plans for the development of it. We have said we will go forward with the development of Teterboro if this agreement is disapproved.

MR. ROSENTHAL: Off the record, Mr. Examiner?

EXAMINER WISER: Off the record.

(Discussion off the record.)

EXAMINER WISER: On the record.

BY MR. ROSENTHAL:

Q Mr. Wiley, are you now in this hearing making a commitment by the Port of New York Authority that it definitely will not develop the fixed base operation facilities under general aviation services at Teterboro should the Board disapprove the agreement?

A I refer you to Exhibit PNYA-1, page 6, Item II(3) where it says:

"If the agreement between Pan American

and the Port Authority is not approved by the Civil Aeronautics Board, the Port Authority itself will continue to operate Teterboro Airport as it has in the past."

I make no commitment as to the detailed plans within which Teterboro would be implemented and improved for the future at this stage of the game other than what is stated in the direct testimony.

Q And you make no commitment that the Port Authority

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will not pursue any development plan?

A That's right.

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STATEMENT BY PORT AUTHORITY COUNSEL

The last question related to the cancellation provisions in the agreements between the fixed base operators presently at Teterboro and the Port Authority. The specific question was whether or not the agreements listed in Attachments C, D, E and F to Exhibit PNYA-1 which are therein stated to be "terminable by either party on 30 day's written notice" are terminable without cause.

Where the data in the Attachment contains that language, the agreement is terminable by either party without cause. It should be noted, however, that that language does

not appear with regard to Atlantic Aviation's lease AT-136 which is detailed in Attachment C or with regard to Safair's lease AT-201 detailed in Attachment E, or with regard to Teterboro School of Aeronautics' lease AT-30 detailed in Attachment F.

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W. E. RICHARDS

was called as a witness on behalf of Butler Aviation and,
having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIMPSON:

Q Mr. Richards, would you state your name and address for the record, if you please.

A Watson Richards, 1302 Chadwick Road, Welshire, Wilmington, Delaware.

Q What is your position?

A I am president of Atlantic Aviation Corporation.

Q Could you describe very briefly what kind of a business Atlantic Aviation is?

A It is rather difficult to do. I will try.

Our business is an airplane sales and service organization operating I think within the whole spectrum
of general aviation from running flights schools to market-

ing and servicing corporate jets. We have 14 bases. We have representation overseas. We are also in Canada. We employ about 1150 people. We do in excess of \$50 million worth of business.

We operate two Piper distributorships under subsidiary names. They have two Beachcraft distributorships. We market the Hawker Siddeley and Gulfstream airplanes in

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addition to providing service to all of these types of airplanes plus other types of airplanes with which we compete.

We also operate our own finance company, and that, in brief, sums up our organization.

Q Is it one of the biggest, if not the biggest, of the general aviation service companies?

A It depends on what measuring stick you use. I like to think we are the biggest in total volume of sales.

Q How long has Atlantic Aviation been on Teterboro?

A Twenty-two years roughly.

Q How long have you personally been in the general aviation service business?

A Twenty-three years.

Q Have you had discussions with Pan American concerning the operation of a new fixed-base operation facility at Teterboro?

A Yes, I have.

Q Could you describe briefly those negotiations?

A In effect, they were not negotiations. They were in essence discussions. We met with the Pan American people on a number of occasions, the last I believe might be dated back six or eight months. At these meetings we, Atlantic, indicated a desire to have a new facility on Teterboro, something that would service the modern airplane and provide

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us with a type of facility that we think we want to have.

We also presented to them a rendering of a type of facility we could see ultimately would be the type we would need to do the job we wanted to do. That to a great extent was the meat of the discussions.

Q During those discussions were you at any time shown the charges which are set forth in the TAMS report?

A No, we did not get down to discussing rates, prices, rentals; nothing of that nature.

Q Could you pay the charges that are shown in the TAMS report and operate on a sound economic basis?

MR. SCHOTT: Objection. Mr. Examiner, this is not rebuttal to anything.

EXAMINER WISER: What does this rebut?

THE WITNESS: You have asked for my reply?

EXAMINER WISER: No, I am asking counsel.

In other words, we reduced our evidence to written form. Of course, this coming in after the rebuttal can only amount to constituting surrebuttal, that is, rebuttal to a rebuttal exhibit.

MR. SIMPSON: Mr. Examiner, I think that what has occurred here is it is very obvious that Mr. Richards --

EXAMINER WISER: I beg your pardon?

MR. SIMPSON: I am trying to answer you, sir.

Mr. Richards has previously tried to maintain a

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position of neutrality. In this letter he stated that he has no objection to Pan American taking over the airport and his opinions have changed and he wants now to express his opinions fully and frankly. It is in rebuttal to PA-R-7.

I think we ought to get on the record exactly what his position is on this situation.

You recall that we objected to PA-R-7 as being hearsay and not expressing Mr. Richards' true views, that we should have an opportunity to have him here, and he is here today to express what his true views are.

MR. SCHOTT: Mr. Examiner, there is nothing in PA-R-7 that deals with the question of rates, charges, P&L, the airport as a fixed-base operation. These were Mr. Richards' views, that he had no objection to Pan American. If he has changed those views, perhaps that is a proper

question, although I doubt that. Certainly we do not have to get into the economics of a fixed-base operation that has not even yet begun to be negotiated as this witness testified.

MR. SIMPSON: If you will look at PA-R-7, page 2, you will see that that letter states in the first paragraph, "I have failed to recognize anything in Pan American's actions thus far to cause me to feel uneasy about our future as a tenant of Pan American on Teterboro Airport."

This question goes directly to that point, as to

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whether or not he is uneasy at this time in view of the fact that he has just discovered what the proposed charges are. All of the questioning directly to that point.

MR. SCHOTT: I should add, of course, that Pan American has not adopted the charges in the TAMS report as the record makes clear.

EXAMINER WISER: He can state that he has changed his mind and that he is now uneasy, but as far as getting in the economics of the thing through oral testimony, I don't think we should do it, because from experience we have found we need to do this through written studies and so forth.

So, you can bring out any change he has had in his feelings on this.

Proceed.

MR. SIMPSON: Mr. Examiner, I would like to make it quite clear that it was impossible for us to get this witness until the last minute, because of putting this letter in as a rebuttal exhibit which we objected to and which was admitted over our objection.

One of the critical things in this case is this question whether the proposal that Pan American has released to the public can in fact be operated.

EXAMINER WISER: You have had that since February.

MR. SIMPSON: It was impossible for us to get this

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witness until this time.

EXAMINER WISER: You never asked me for any subpoena of him or anything.

Just proceed along the lines I have indicated.

MR. SIMPSON: I might add at this time --

EXAMINER WISER: Do you have a request for relief? If you have a request for relief, propound it, and I will consider it.

BY MR. SIMPSON:

Q Mr. Richards, is there anything at this time which makes you feel uneasy about your future as a tenant of Pan American on the Teterboro Airport?

A Yes.

Q Would you state what it is, please.

A For the first time, today, I had the opportunity of reviewing a report prepared by an engineering-architectural firm engaged by I believe Pan American, which disclosed certain incomes which they must realize from the operation of Teterboro, and I observed the amount of dollars that they are asking for for the type of facility I have in mind. It frightens me. It concerns me that I would operate a facility of that type paying those charges together with all the other operating expenses incidental thereto. I feel it is extremely high.

Q Do you feel that you could operate a facility with

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those charges and do so on a sound basis?

A I doubt it.

Q Do you believe that there is enough business to support two full fixed-base operators on the airport, plus the other three hangar facilities?

MR. SCHOTT: Objection, Mr. Examiner.

MR. SIMPSON: This goes again to the question why he is uneasy and directly related to this letter.

MR. SCHOTT: I think it is not established that this is a change in circumstance since any discussions Mr. Richards may have had with Pan American.

EXAMINER WISER: I think you do have to go to that

point, Mr. Simpson. Sustained.

You can bring out anything that has changed so as to cause him to change his feelings.

BY MR. SIMPSON:

Q When you wrote the letter dated December 8, 1957, did you contemplate that it would be possible to operate two fixed-base operations, plus the use of the three hangar facilities and do so on a sound economic basis?

A No.

Q Do you think that that could in fact be done?

A Not for several years.

Q Have you ever been in negotiations on any airport where you have not had a chance to negotiate fees and charges?

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A No, sir.

Q Were you aware that there was possibility of a charge of 8-cents a gallon on fuel at the time you wrote this letter?

A No, sir.

Q What do you in fact pay for fuel at the present time on Teterboro?

A We are paying 4-cents a gallon. I believe I am correct, 4-cents.

Q And the distributor pays 2, I believe?

A The supplier is billed 2-cents, a total of 6.

Q How does this compare with the fuel rates on other airports?

A To the best of my knowledge, we are paying 2-cents at all of our other locations, and truthfully I can't tell you whether there is a charge to the supplier. If there is, I am not aware of it.

Q What would be the effect of an 8-cent charge per gallon for fuel at Teterboro?

A I think it is extremely high. I think it would prevent the operator from paying, affording the type of service we like to give, which comes out of profits.

Q Were you previously aware that Pan American intends to eliminate local flying from the airport?

MR. SCHOTT: Mr. Examiner, I object. We are far

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beyond any proper rebuttal.

MR. SIMPSON: This goes directly to the question of the items which lead him to feel uneasy, Mr. Examiner, the restrictions on local flying and so forth are also part of this picture.

EXAMINER WISER: Overruled.

MR. SCHOTT: Mr. Examiner, those were recommendations. None of these were decisions by Pan American you understand.

EXAMINER WISER: Let's have the question read.

(The Reporter read the pending question.)

EXAMINER WISER: Rephrase your question.

BY MR. SIMPSON:

Q Were you aware at the time you wrote your letter that there is a proposal to limit local flying at the Teterboro Airport?

A I find it a rather difficult question to answer in view of the fact that I don't know the definition as it is used here for local flying.

Q Let's say that it has been established in this record that what Pan American has in mind is a takeoff from Teterboro, a landing at the same airport without going 20 miles beyond the radi-- a radius of 20 miles outside of Teterboro.

A It would appear to me that would be a detriment

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to the service business of an operator in view of the fact that many airplanes are taken for short test hops for calibration of airborne electronics.

Furthermore, I don't know how it could be policed.

Q Were you aware at the time you wrote this letter that one of the rules which would go into effect on Pan American's taking over the airport would be as follows, and I am quoting --

EXAMINER WISER: What are you quoting from?

MR. SIMPSON: This is Exhibit E of the proposed agreement between Pan American and the Port Authority, Rule No. 20, that is.

BY MR. SIMPSON:

Q "No aircraft shall land, takeoff or taxi at the airport with a student pilot at the controls without the permission of the airport operator."

A I was not aware of that.

Q What is your position on that at this time?

A Well, we are back to descriptions again. I would assume in this case that Pan American means a person that does not have a pilot's license other than a student license. Not being an airport operator as such, I cannot express an honest opinion as to how that would be a detriment to the airport.

I wish to point out, if I may, if I don't deviate

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too far from the subject, that we operate a Beachcraft distributorship on Teterboro, and we sell many, many single-engine airplanes, and I would hate to see the type of operation that we operate there hampered, although we do not run a flight school.

I would like to see us have the privilege of con-

tinuing to operate our single-engine marketing activities as we always have.

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Q Getting back to the fueling question, do all of the airplanes which have landed at Teterboro take on fuel?

A I can only speak for those that come to our facility, and the answer is no.

Q Based on the factors you have testified to, have you in fact changed your opinion from the letter of December 8, 1967? Do you think it is necessary to have Pan American operating the airport?

MR. SCHOTT: Objection. It was not so stated in the letter.

EXAMINER WISER: Sustained. Rephrase your question.

BY MR. SIMPSON:

Q Based on the things you have testified to, have you changed your opinion -- the views you expressed in your letter of December 8?

A Yes, based on the charges that I see, I feel that I was not fully advised prior to the time I wrote the letter.

Q Has Atlantic Aviation desired to build new facilities at Teterboro for a number of years?

MR. SCHOTT: Objection.

EXAMINER WISER: How does this relate to the letter?

MR. SIMPSON: This relates to the question whether Pan American is in fact necessary, or whether there are other ways that general aviation facilities can be provided on

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this airport.

I admit that this is a new question, but this is a new witness who was not previously available to us, who previously refused to testify because of certain things which I think now become clear in the record.

I think this is an exceptional situation, and we should be permitted to present this evidence which, in our opinion, is absolutely vital to this case.

EXAMINER WISER: Objection sustained.

MR. SIMPSON: I would like to make an offer of proof at this time, that if Mr. Richards had been permitted to testify, he would have testified that Atlantic Aviation has made proposals in the past to the Port of New York Authority for the building of general aviation facilities at Teterboro Airport, that they are willing to go ahead with such buildings and that there would be no difficulty in obtaining financing for such facilities.

EXAMINER WISER: Does that complete the direct?

MR. SIMPSON: I believe so, if I may just review my notes a minute.

I have one more question.

BY MR. SIMPSON:

Q Is a general aviation service business a high-profit margin business, or a low-profit margin business?

A Low-profit margin.

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PAUL S. DOPP

was called as a witness on behalf of Butler Aviation, and
after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIMPSON:

Q Would you state your name and address for the record, if you please?

A Paul S. Dopp. My business address is 29 Broadway, New York, New York.

Q Are you President of Butler Aviation?

A Yes, I am.

Q Are you sponsoring Exhibits BA-1, 313, 318, 402 and 539?

A Yes, I am.

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Q Are they true and correct to the best of your knowledge?

A Yes, they are.

Q Mr. Dopp, in Exhibit PA-R-20, there is a suggestion that the White Plains Airport in Westchester County is convenient for New York City. Do you have a comment on that or some additional information on that point?

A The comment I think I could make from our direct experience at La Guardia, our operations at La Guardia Airport, is that a great deal of our operations that we do handle at La Guardia are flights that originate, aircraft that are based at White Plains and come to LaGuardia to pick up their passengers or deplane passengers. It is ~~obvious in our opinion that White Plains as a point of pickup for New York City is nowhere near as convenient as~~ is La Guardia.

Q Does Pan American fly Falcons down from Westchester to pick up prospective customers for demonstration flights?

A I believe they do. We don't generally log the purpose of the trip, but Pan American brings their Falcons from White Plains to La Guardia to make quite a number of pickups during the course of a year.

Q Have they on occasion flown a Falcon down from

Westchester to pick up Mr. Trippe at La Guardia?

A Well, Mr. Trippe departs from our facility from

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time to time.

Q On Falcon aircraft?

A Yes.

Q Does Mr. Trippe base his personal DC-23 at La
Guardia?

MR. SCHOTT: Objection, there is no such aircraft.

BY MR. SIMPSON:

Q B-23.

A The B-23 that is owned by Pan Worl Airways has
been based at our facility at La Guardia for some years
now. Mr. Trippe uses his airplane, as I understand it,
quite a bit.

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Q Exhibit PA-R-6 refers to conversations between
you and Pan American. At any time in those conversations
between you and Pan American, at any time in those conver-
sations, did they tell you the schedule of proposed charges
that there would be for the Teterboro Airport?

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A No, we have never had any such discussions.

Q Based on your experience in the general aviation

business, could you afford to pay the annual rents shown in the TAMS Report?

A It is clear beyond a shadow of doubt in our minds, and I have attempted particularly since I heard the other day, the man who prepared this TAMS Report, his statement that he had not discussed these projects with any operator, I was dismayed when I learned that only at this hearing, but I asked our accounting people, and our budgeting people to review these forecasts, these charges of rents.

We have also taken the liberty, as I'm sure you have gathered here, we have discussed this with Mr. Richards in the last few days, and we have talked to others like Pacific Airmotive, and I think it is fair to say everybody is appalled as to the lack of thinking that has apparently gone into this.

MR. SCHOTT: Objection, Mr. Examiner. I don't think that a few forecasts given by the witness at this state in improper oral testimony, should be permitted.

EXAMINER WISER: How can you justify that now, Mr. Simpson?

MR. SIMPSON: Mr. Examiner, I think that one of the critical issues in this case is can Pan American really put up the kind of facility shown in the TAMS Report and do

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it on an economic basis, and will it in fact do so. I might say that I personally have had the TAMS Report since it was distributed, but, as you know, I know nothing about the general aviation business. All my experience has been in the airline industry.

Mr. Eichner, our economic consultant, asked Pan American for a set of exhibits, and unfortunately, for some reason, he did not get a copy of the TAMS Report with those exhibits. I did send a copy of it on to Butler Aviation, but Mr. Dopp has been in Germany and San Francisco and Florida and other places, and he did not have an opportunity to go over this report in detail.

It wasn't until Mr. Prokosch got on the witness stand and stated that he had not contacted any of the fixed base operators, had made no study to determine whether operators could, in fact, pay these charges, that he realized the implications of these things.

Now, this has been a case which has proceeded extremely rapidly. We simply have not had the time to develop this. We would like the opportunity to put this in.

This case has been expedited beyond that of any case I have ever been in. Under these unusual circumstances

we would like to put this testimony in.

EXAMINER WISER: Since you have made that speech,

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I will say that I don't think it has been expedited beyond any case you have been in, and I think you have had plenty of time. It was given to you February 14th, so far as I know, which was the exhibit exchange date, and you have really given no excuse for waiting until this date and not even trying to reduce it to written form,

It is just a gross violation of our ground rules. You should know better. You should try to protect our procedural processes. You, as a lawyer, should be on the job a little better on that than you have been. It is entirely too late to bring it in orally at this time.

MR. SIMPSON: I would like to make it clear that Mr. Dopp was not aware of this until --

EXAMINER WISER: You were though?

MR. SIMPSON: I was not aware that this problem existed. As I say, I don't know anything about the general aviation business. The first time that I knew there was this problem was when Mr. Dopp called it to my attention at the time that Mr. Prokosch was on the witness stand. That is the first time.

I think this is an unusual circumstance. This

case has moved very rapidly. I think this is vital evidence.

EXAMINER WISER: I think it has moved slowly. You, for example, asked me to set up a procedural date in which

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you would have time for rebuttal exhibits structured on Pan American's information, and I don't see any of them there. This is the type of thing that you should have done.

You prevailed upon me to change the procedural schedule to give you time to present exhibits based on this, and this is the type of thing you should have prepared on February 28th.

MR. SIMPSON: The fact is, Mr. Examiner, I was completely unaware of this and Mr. Dopp was completely unaware of it, because he has been out of the city most of this time.

He was unaware of it until Mr. Prokosch got on the stand.

EXAMINER WISER: I think we have spent enough time on it. You haven't made a showing that would justify doing it orally at this late stage.

The objection is sustained.

MR. SIMPSON: I would like to make an offer of proof then, if I may, Mr. Examiner.

EXAMINER WISER: Proceed.

MR. SIMPSON: If permitted to testify, Mr. Dopp would have stated that his projections show that with the schedule of charges shown in the TAMS Report, Butler Aviation, if it were operating one of the fixed base operations, would lose approximately a million dollars in the first three years of operations.

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Q Is the general aviation business a high-profit margin or a low-profit margin business?

A The business is extremely competitive. It is best characterized as an extremely low-profit margin business.

Q Is it fair to say that sometimes there is no profit margin?

~~A It is fair to say Butler Aviation lost substantial monies last year.~~

I don't know whether that is --

Q Yes.

Do all of the aircraft -- by that I mean general aviation aircraft -- that land at LaGuardia take on fuel?

A No, this is not true.

LaGuardia happens to fall pretty well within our national average. We, of course, at Butler Aviation handle about 48 percent as many flights as all the airlines in this country put together. Therefore, we handle a great number of

flights in a day. Most of these flights are, of course -- about 18 percent of these flights are single-engine flights.

Our national average, that is, the percentage of fuelings to total arrivals is pretty well running at this time -- which is up from what it was several years ago -- up to around 40 percent. At LaGuardia we fuel around 40 percent of the flights that arrive on our ramp. This varies.

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As a matter of additional interest, such places as Palm Beach over Midway, that is, less busy airports, they may range up to 75 or 80 percent of fuelings to total arrivals.

Q Would a fueling average in the are of 960 gallons per takeoff for turbine and prop jet aircraft?

A For takeoff, that is out of the question. That is not a proper figure.

Per fueling, for turbine aircraft, and, of course, the character is changing as some of the larger airplanes come into the fleet with higher fuel capacities, but 960 gallons per takeoff would just be impossible.

In other words, this takes into the average the total number of people that are departing from an airport. First of all, there is no such thing as 100 percent fuelings. As I stated, our average is more like 40 percent. 960 gallons

may not -- we would have to do some research on this -- may approximate an average fueling. I think it is a little high still for a turbine aircraft.

Q What would be the effect of an 8 cent charge for fuel at Teterboro in your opinion?

A Well --

MR. SCHOTT: Objection.

EXAMINER WISER: What ground?

MR. SCHOTT: On the ground that it has no relevance

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to anything Butler has put in.

If it is intended to be rebuttal of Pan American, it should have been made sooner. This is nothing that came out at the hearing, Mr. Examiner.

MR. SIMPSON: Again, Mr. Examiner, this relates to a piece of information which Mr. Dopp was not aware of until last week, and I think it is important to this case.

EXAMINER WISER: You have a responsibility to the client and to the Board to advise him what is going on. We can't sit here and you say you didn't bother to show it to your client. You have a duty here, Mr. Simpson, and we can't bail you out of all your failures. If you can't show your client the exhibits, it is very unfortunate. You should have, certainly.

MR. SIMPSON: I certainly did transmit all of the Pan American exhibits, including the TAMS report, to Butler Aviation. Unfortunately, Mr. Dopp just did not have time to review all of these things in detail. This is one detail that he previously missed, and it is an important one to the case.

I am asking permission to ask this one question to get this in the record. I think we should be more interested in getting facts in the record than in preserving the purity of the rules of practice, which require the use of common sense.

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EXAMINER WISER: The purpose of those rules is to get the facts in, and we know from long experience that orally is not a satisfactory rule for getting in these complicated matters. You know it as well as anyone else.

MR. SIMPSON: I agree completely, Mr. Examiner, but I think there are proper exemptions.

EXAMINER WISER: So, your contention that it is not common sense to follow these rules is not acceptable.

I haven't heard anything that would justify your bringing it in now at this late stage. Why didn't you reduce this to exhibit form now and bring it in?

MR. SIMPSON: Because it is one question that can

be answered very simply. This is the normal practice in this type of case.

EXAMINER WISER: I beg your pardon?

MR. SIMPSON: Because it is normal question to ask one or two questions of this type without difficulty.

EXAMINER WISER: Not of the elaborate type that you have been doing.

MR. SIMPSON: I don't think that --

EXAMINER WISER: It is not normal practice at all.

MR. SIMPSON: Almost all of the questions I have asked today have been directly related to Pan American rebuttal exhibits.

MR. SCHOTT: This certainly isn't.

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MR. SIMPSON: If you are saying I cannot ask the question, I would like to make an offer of proof on it, if I may.

EXAMINER WISER: Proceed.

I hope in future cases you will be a little more careful to try and get things in in advance.

If this is so essential to your case, it is amazing you didn't think about it before.

THE WITNESS: I think then, to answer your question --

EXAMINER WISER: No, counsel is going to make an offer of proof.

MR. SIMPSON: Yes, I would like to make an offer of proof, that if Mr. Dopp had been permitted to answer my question, he would have stated that 8 cents is far too high a price for the distributor and the retailer to pay, and that it would mean raising the price to the general aviation user making the price prohibitive.

THE WITNESS: May I have a short conference, sir? Is that permissible?

EXAMINER WISER: Surely.

MR. SIMPSON: I would also like the record to show, if I may, that it was only last week we learned that Pan American had no studies other than the TAMS report and that they were intending to rely to a certain extent on that.

On cross examination it turned out there was no

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other feasibility study made. These questions arise partly as a result of that.

I have no further direct examination,
Mr. Examiner.

EXAMINER WISER: I wonder about the accuracy of your statement. It seems to me the studies were all put in on February 14, 1968, and that you have had the full facts since then. That is my understanding of the posture, Mr. Simpson.

MR. SIMPSON: But Mr. Prokosch testified that he

had not checked to see whether any of these people could pay these fees and charges, hadn't checked on any of these things, and it turned out in cross examining Mr. Bilzi that they made no other feasibility studies other than the TAMS report.

The exhibits indicate that they are not really sure they are going to adopt the TAMS report. Now we find there is nothing else but the TAMS report. I think the situation changes as a result of the testimony.

EXAMINER WISER: I haven't noted any situation change, because we were discussing that as far back as the prehearing conference.

On page 7 of the conference report, paragraph 3, I note they stated they would respond by submitting the feasibility study as well as any other forecasts that have been completed.

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So on February 14, when they sent in this feasibility study and nothing else, you knew that they had not completed any other forecast.

I question the accuracy of your statement, Mr. Simpson.

MR. SIMPSON: If you will give me an opportunity, I could find where they say -- let's take a look at PA-18. They state nothing more than the plans are in general based on the TAMS report. "General", I think is in there two, or three

times.

At another place, I think they say they haven't adopted the TAMS report in detail. We assumed, naturally, there was some other feasibility study.

EXAMINER WISER: I don't think you could justify that in view of page 7, that they would put in any that they had.

MR. SIMPSON: We still have, of course, outstanding the blue book which apparently has something to do with it, which I don't know.

EXAMINER WISER: I think you will have that and be able to bring in anything on that you desire.

Are there any other matters?

MR. SIMPSON: I have no further direct examination.

2600

BY MR. ROSENTHAL:

Q Have you been told personally by a representative of any corporation that that corporation is interested in making substantial developments at Teterboro?

MR. SCHOTT: Objection. It is not relevant to anything.

EXAMINER WISER: What is this about, Mr. Rosenthal?

MR. ROSENTHAL: One fact the Board may want to

consider in its decision is whether there are other possible entrants into the operation of Teterboro and/or Republic.

MR. SCHOTT: That issue isn't before the Board. The question before the Board is whether or not to approve these agreements. Further, it is not cross examination addressed to any of Mr. Dopp's testimony or exhibits.

EXAMINER WISER: You may answer.

THE WITNESS: I have had --

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EXAMINER WISER: The answer is first "yes" or "no", and then you may explain.

THE WITNESS: I'm sorry. Perhaps I had better have the question.

EXAMINER WISER: The question will be read.

(Record read.)

THE WITNESS: The answer is yes. For a number of years or as long --

EXAMINER WISER: First, give the name and then proceed.

THE WITNESS: Well, I --

MR. SIMPSON: I think he should be able to answer the question in his own words.

EXAMINER WISER: He can answer in his own way. I think he should give the name and then proceed. Certainly

it isn't going to be secret.

MR. SIMPSON: I think he should be able to go ahead and answer it.

EXAMINER WISER: Give the name and then answer it.

THE WITNESS: I had discussions as long ago as several years with Shell Oil Company. This, of course, is why I hesitate to mention names, because Shell Oil Company, as other companies with whom I have had discussions in the past, are major suppliers of Pan World Airways. I have had

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discussions with Shell, with other fixed base operators, such as Newark Air Service, that have been interested for a great many years in considering on a sound basis, investments or plants somewhat similar to those that have been proposed by Pan World Airways.

BY MR. ROSENTHAL:

Q Does that complete your answer?

A I think so.

Q Is Butler Aviation capable of making a 10 to 30 million dollar capital investment in Teterboro?

MR. SCHOTT: Mr. Examiner, I must object again. I really don't know what this has to do with any issue in the case, whether they are or aren't.

EXAMINER WISER: What's the difference if they

are or not? I think you have got to get a question before that, before you ask this question. In other words, "X" millionaire might be able to put the \$30 million in, but you've got to show some pertinency, does he want to do it?

BY MR. ROSENTHAL:

Q Assuming Butler Aviation had the financing, would Butler Aviation be interested in developing Teterboro Airport on a substantial basis?

A I think the answer is yes. We are not prepared to make the type of investment or on the basis that Pan

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American is proposing here. We don't believe it is feasible. We are willing on a sound basis, as I think there are others in the industry, that are willing to make sound investments to provide additional facilities at Teterboro Airport.

Butler is among them. It is my opinion -- it is our opinion that the economics will not support the type of investment, the type of facility that Pan American has proposed to the Port Authority and to the public.

MR. ROSENTHAL: I have no further questions.

MR. SCHOTT: I have some cross, based on the nature of Bureau Counsel's cross examination.

BY MR. SCHOTT:

Q Do you know whether Shell Oil or any other fixed base operators have attempted to negotiate with the Port of New York Authority for the lease of Teterboro Airport?

A Your word "negotiate" -- I have had discussions 3 or 4 years ago before Pan American even announced, and told Mr. Cooper, who is in charge of the facilities for the Port Authority, that we are interested and other oil companies are interested.

Shell has also made that known so they told me.

Q Do you know, leaving Butler out, whether anyone else has actually proposed to the Port of New York Authority

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to negotiate a development of the type that has been negotiated by Pan American?

A This, of course, is hearsay.

Q If you don't know, say so.

A Other than being present over four years ago with Mr. Richards at a meeting with Mr. Wiley, when he was asking for new leases and new facilities to make improvements for Atlantic Aviation in 1964, so in that case, yes.

Q Was that for a total airport improvement or was it improvements to his facility?

A It was for airport development. Pan American is not providing total airport development.

Q With a terminal building, the runway improvements, the hangar buildings? If you don't know, all you have to do is say "I don't know."

A We had better start again. You had better ask me a new question, or rephrase the question or have it read.

MR. SCHOTT: Would you read by question? I think if you listen to the question and tend to answer that instead of something else, you may remember the question.

MR. SIMPSON: I think that could be stricken from the record, Mr. Examiner. That is uncalled for.

EXAMINER WISER: Read the question.

(Record read.)

2605

MR. SIMPSON: I think there is one problem --

EXAMINER WISER: Do you object?

MR. SIMPSON: Well, I think the question is not clear.

EXAMINER WISER: Object to it then.

MR. SIMPSON: I am objecting to it, because the question is not clear.

EXAMINER WISER: Do you understand the question?

THE WITNESS: I think I do, but I would really like it read over again.

(Record read.)

THE WITNESS: As to a total development as proposed by Pan American, the answer is no. I do know others who are willing to, though, and have been for some years.

BY MR. SCHOTT:

Q Has Butler made any such proposal to the Port of New York Authority?

A Butler Aviation has not made a detailed proposal, but we indicated our interest some years ago in submitting such a proposal, either jointly with others or on our own behalf.

The Port Authority never -- those negotiations or discussions were never carried forward.

* * *

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* * *

Q Would you turn to Exhibit PA-R-20, page 2, if

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you please? Do you have a comment on the last paragraph of that exhibit?

A The final paragraph covers airports which are also covered in my testimony, BA-2. These airports were classified in the Tri-state Airport Committee Report which both Pan American and Butler Aviation have used as a source as to the type of airport and the type of facilities which they had, ranging from number 1 which is the highest, an

all-weather airport with 5,000 foot runways down to number 6, which is a landing strip without paved runways, and the unpaved strip is usually less than 2,000 feet.

None of the airports listed in this final paragraph are the number 1 category. Linden is a number 3 category, Caldwell Wright is number 3, Totowa-Wayne is a number 3, Lincoln Park is number 5 category, Towaco is a number 5 category, Hanover is number 4, Somerset Hills is mis-spelled in PA-r-20, it is Somerset Hills, which is number 5 category, Hadley, number 5, Preston, Number 5, Red Back, number 5, Christie, because of its 1500 foot unpaved runway, would be number 6, Ramapo Valley, number 4, and Zahns.

MR. SIMPSON: We have no further direct, Mr. Examiner. I would like at this time to offer in evidence, the exhibits which Mr. Eichner is sponsoring.

EXAMINER WISER: Any objections? I hear none,

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and Exhibits BA-2 through 5, 51 through 54, 100, 101, 103 through 107, 151, 152, 201, 251, 301 through 312, 314 through 317, 319 through 322, 351 through 353, 401, 403 through 405 and 501 through 538 are received in evidence.

(Whereupon, the documents

marked Exhibits BA-2 thru 5,

51 thru 54, 100, 101, 103

thru 107, 151, 152, 201, 251,
301 thru 312, 314 thru 317,
319 thru 322, 351 thru 353,
401, 403 thru 405 and 501
thru 538 were received in
evidence.)

EXAMINER WISER: Is there a request for cross
examination except by Pan American and Bureau Counsel?

There being none, you may proceed, Mr. Schott.

CROSS EXAMINATION

BY MR. SCHOTT:

Q Would you turn to page 1 of your written testimony,
which is Exhibit BA-2. In the last full paragraph on the
page, beginning, "The research at hand demonstrates..."
you talk about an area that you refer to as the Port of
New York Authority, and Nassau County area. That is not
intended to designate the whole of what the FAA would call
the New York hub area, is it?

2614

A It is intended to designate the Port of New York
Authority area which we consider to be the area in this
case. Because Republic Airport was also in the case we
would add the words, "and Nassau County area" but, of
course, Nassau County has no usable public airports.

Q I don't think you answered my question.

EXAMINER WISER: Do you have the question in mind?

THE WITNESS: Yes, sir. The area in this case as we define it is the Port of New York Authority area as shown on Exhibit BA-3, page 2. It is not the same as any other area which you may have in mind, Mr. Schott.

BY MR. SCHOTT:

Q It is in fact smaller than the New York hub area as defined by the FAA?

A It does not include airports which may be listed by the FAA as in the hub area, but I have never seen a formal study by the FAA of what is included in their hub areas, and I have understood these airports to change from time to time.

We now have the entire FAA Exhibit in, so we can look and see how broad these areas are. For example, Fort Lauderdale is included in the Miami area, and yet I would consider that a separate airport operation.

2615

L. JOHN EICHNER

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION (Continued)

BY MR. SCHOTT:

Q I was asking you some questions directed to page 1 of Exhibit BA-2.

In the bottom paragraph of that page you refer to 12 airports in the area of this case. Are those the 12 airports which you list in Exhibit BA-4?

A Yes, sir.

Q And that list is not from the Tri-State Study, is it?

A No, sir.

Q What you have done is taken the Port of New York Authority area and added two airports for what you call information purposes?

A Yes, sir.

Q One of the two airports is the Farmingdale Airport?

A Yes, sir.

2616

Q How far is that from Mid-town Manhattan and --

MR. SIMPSON: Could we go off the record?

EXAMINER WISER: Off the record.

(Discussion off the record.)

EXAMINER WISER: On the record.

(The Reporter read the pending question.)

THE WITNESS: I believe in one of the exhibits it states that it is approximately the same distance as Westchester, and I don't recall the exact figure offhand, but

I believe it was something like -- I would rather not say because I believe it is in one of the exhibits.

BY MR. SCHOTT:

Q Exhibit PA-1 shows it is 29 air miles from downtown New York?

A Yes, sir.

Q You don't have any question about that, do you?

A No, sir.

Q And you have been looking at Exhibit PA-R-20, haven't you?

A Yes, sir.

Q That shows that Westchester is 26 miles from New York?

A PA-R-20 shows that it is 26 miles from New York.

Q Does it also show on that same page that Morristown is 23 miles from New York?

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A It does.

Q You didn't see fit to include them for information purposes on your Exhibit BA-4, did you?

A Because they are outside the Port of New York Authority area and also because we do not consider that corporate aircraft found them as attractive to use as the Teterboro Airport or the LaGuardia Airport which is in this case.

Q For the Farmingdale Airport which you included in your BA-4.

A The Farmingdale Airport was included because it was specifically made part of this case. If it were not made part of this case, we would not have included the Farmingdale Airport either.

Q Your written testimony on page 1 refers to the Port of New York Authority and Nassau County area. You know, don't you, that Farmingdale is not in Nassau but in Suffolk?

A I know that the airport at Farmingdale is directly across the line from Nassau County in Suffolk.

Q If you had included Suffolk County you would also have picked up McCarter Airport, wouldn't you?

A I believe we would have picked up a number of additional airports which aren't as conveniently located as Teterboro and LaGuardia Airport is to Manhattan.

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BRIEF OF NATIONAL AVIATION TRADES ASSOCIATION TO ASSISTANT CHIEF EXAMINER RALPH L. WISER

INTRODUCTION

The National Aviation Trades Association (NATA) is the largest trade association with respect to numbers of members and coverage of the interests in the aviation and air transportation industry devoted to the representation of commercial interests and operators. Our Association

must be clearly distinguished also from associations which represent non-commercial pilots and aircraft owners, such as the Aircraft Owners and Pilots Association and from commercial pilots such as represented by the Airline Pilots Association. NATA is the only association in this proceeding representing the thousands of persons engaged in commercial aviation and air transportation.

* * *

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PAN AMERICAN BRIEF

Beyond all these answers, it is also relevant to note that Atlantic Aviation, which as the fixed base

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operator at Teterboro would have much more cause for concern than Butler if there really were such a "conflict", disagreed with this contention. In a letter sharply criticizing NATA's petition in this case, Mr. Richards, President of Atlantic Aviation, wrote as follows:*

"You know as well as I, Frank, that many of our metropolitan airports are reaching a point of dangerous saturation. We also know that this condition was not brought about by the doubling, tripling or quadrupling of the number of air carrier airplanes. It was brought about by the wonderfully rapid growth of general aviation. I would submit that we who represent general aviation should recognize the problems that exist and acknowledge that we have contributed to the present situation. I am not prompted to attempt to find a solution to the problem by claiming that the airlines are trying to run

us out of business or any other argument based on emotion. I am confident that the airlines recognize, as we do, that private aviation and business aviation are here to stay, that we have a mutual problem, and the problem must be solved, that there are solutions to these problems, that these solutions can be found, but only if we work together in a group effort to find them.

"I think it's about time that all of us in the aviation industry stop cursing the darkness and light a few candles."

(Exhibit PA-R-7)

* Mr. Richards' oral testimony related entirely to the financial implications of the forecasts in the TAMS report, and in no way detracted from the views quoted in the text.

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PORT AUTHORITY BRIEF

The Federal Aviation Agency, in its letter of January 2, 1968 to John R. Wiley (Amendment No. 1 to the Application in Docket No. 19046) stated that

"The Federal Aviation Administration considers the development of this Airport (Teterboro) to be in a high priority position for Federal assistance."

AOPA, which opposes approval, states it to be their view that

"The plans of Pan American to improve Teterboro Airport are very impressive. They go a long way toward insuring adequate general aviation facilities in the greater New York area."

AOPA, Statement of Position, p. 6

Butler, the prime opponent of approval, in its Statement of Position, at p. 2, asserts

"* * *Butler does not oppose the expansion of general aviation facilities at

these airports. We agree that there is a need for additional general aviation facilities in the New York area and therefore agree that these airports should be developed fully."

The Port Authority shares the view that these improvements are needed and for the same reasons, viz., the relief of congestion at the New York area airports (Ex PNYA-1, pp. 3, 4) and to accommodate the increasing general aviation traffic (See Ex PNYA-1, Att. B-1). Provision of the facilities will result in diversion of general aviation traffic to Teterboro (Tr. 58, 116, 255-6) thus relieving congestion.

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Their development will facilitate the handling of the traffic increase. Significant here, particularly in the light of the suggestions that the Agreement should be disapproved with the hope that the Port Authority or some other governmental agency will make the required improvements, is the fact that the need is urgent (Interim Report of Aviation Subcommittee, Committee on Commerce, etc., 1/23/68, pp. 6, 7). Meeting the need promptly is assured under Pan Am operation of the Airport (Ex PNYA-1, pp. 3, 4). Pan Am has done the planning, is ready to go forward and willing to commit the substantial funds required right now without additional expense to the public (Tr. 58-9, 246, 330). If the Agreement is disapproved, the cycle must begin again. No commitments, of the kind Pan Am has made, have been made by the Port Authority or anyone else. In fact, the Port Authority has made no commitment, other than that it will com-

plete the runway, taxiway and navigational aids improvements (Ex PNYA-1, p. 6; Tr. 115-6). Pan Am, on the other hand, and despite the date fixed for the commencement of the term of the Agreement (Sec. 1), is prepared to go ahead immediately with preparatory work (Tr. 273, 330-3). Approval of the Agreement is, in the opinion of the Port Authority, the best and quickest way to full development of the Airport (Tr. 75).

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PAN AMERICAN WORLD AIRWAYS, INC.
FARMINGDALE AND TETERBORO AIRPORT OPERATION

DOCKET 19045 ET AL.

Pan American World Airways, Inc., agreement with Fairchild-Hiller Corporation and Farmingdale Corporation for operation of Republic Aviation Airport will be inconsistent with the public interest and is not approved.

Pan American World Airways, Inc., agreement with Port of New York Authority for operation of Teterboro Airport will not be inconsistent with the public interest and is approved, subject to conditions.

Appearances:

Elihu Schott and David L. Steege for Pan American World Airways, Inc.
John W. Simpson and William C. Burt for Butler Aviation Company.
Merrill Armour for National Aviation Trades Association.
John S. Yodice and Lawrence F. Anito, Jr., for Aircraft Owners & Pilots Association
Francis A. Mulhern for The Port of New York Authority.
Michael Raoul-Duval, John Robson, and Elroy Wolff for Department of Transportation.
Herbert A. Rosenthal for Bureau of Operating Rights.

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INITIAL DECISION OF RALPH L. WISER, ASSOCIATE CHIEF EXAMINER

Pan American World Airways, Inc., asks approval of its application in Docket 19045 with respect to its agreement with Fairchild-Hiller

Corporation and Farmingdale Company for the lease and continued operation as a public airport of Republic Aviation Airport in Farmingdale, Suffolk County, New York, and its application in Docket 19046 with respect to its agreement with the Port of New York Authority under which Pan American will operate Teterboro Airport at Teterboro, New Jersey. The Aircraft Owners and Pilots Association, Butler Aviation Company, National Aviation Trades Association, and the Port of New York Authority have been granted permission to intervene. Hearing has been held and briefs have been filed.

At the hearing, Pan American amended its application to include the following as a condition of approval:

"Except in connection with aircraft which it may sell, own or operate, or on a casual, infrequent or emergency basis, Pan American will not engage in the aviation service business at either Republic or Teterboro Airports; provided however, that Pan American may provide such services for a period up to 90 days if necessitated by failure of persons normally engaged in such activities to provide such services. Aviation service business involves principally the following activities: (1) the sale to users of aircraft fuel and lubricants; (2) the delivery of fuel into aircraft; (3) aircraft maintenance and repair; (4) the sale and installation of avionics; (5) the provision of hangar storage and outdoor tie-down locations for aircraft (Pan American reserves the right also to provide hangar facilities and public tie-down services); and (6) the performance of turn-around services."

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The Pan American-Port of New York Authority Agreement on Teterboro Airport. Teterboro Airport is located to the west of New York City and one mile southwest of Teterboro, New Jersey. It is approximately five miles from the George Washington Bridge and the Lincoln Tunnel, and is served by a network of superior highways which furnish excellent connections to mid-Manhattan. The approximate ground travel time to the Pan Am Building via four alternate routes ranges from 20 to 25 minutes. It is owned and

operated by the Port of New York Authority.

Negotiations concerning Pan American's operation of Teterboro Airport commenced with oral discussions in September 1964. Letter agreements on various phases of the matter were entered into on July 28, 1965, August 6, 1965, August 31, 1965, October 11, 1965, and November 15, 1965. Negotiations continued but reached an impasse in September 1966. However, further discussions were conducted, including the possibility that Pan American would be the major tenant rather than the operator of the airport. Differences were gradually resolved, and the agreement for Pan American's operation now before the Board was executed on September 19, 1967.

This agreement provides for operation of Teterboro Airport by Pan American for a period of thirty years commencing upon completion of either the runway 6-24 or 1-19 portion of the runway and taxiway construction which is currently under way. Runway 1-19 is expected to be completed December 15, 1968, and runway 6-24 is expected to be completed February 15, 1969. Pan American will be responsible for the care, maintenance, and repair of the airport and facilities and will assume all liabilities for

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its operation. All existing agreements between the Port Authority and users of the airport will be assigned to Pan American as of the effective date of the agreement and Pan American will receive all rentals and fees payable to the Port Authority under these agreements and all revenues from the operation of the airport.

The Port Authority is relieved of any further investment cost or expense, and is to be paid a fee by Pan American. The agreement includes a statement of the rules and regulations to be in effect as of the commencement of the term for reasons of safety, health, preservation of property,

and for the safe and efficient use of the airport. These rules and regulations may be modified by the Port Authority with the consent of Pan American. The agreement also contains a schedule of charges for public areas at the airport and provides that any charges to be assessed in excess of those at other Port Authority airports must be approved by the Board of Commissioners of the Port Authority. The operation and use of the airport is limited by the agreement to aviation and associated functions and specifically excludes scheduled aircraft operations with the exception of operations within the Port of New York District by helicopters or other newly designed aircraft performing like functions. The agreement requires Pan American to operate Teterboro as a public airport in a nondiscriminatory fashion and requires fair, reasonable, and not unjustly discriminatory practices.

Fees to the Port Authority to be paid by Pan American will be \$320,000 the first year, \$448,000 the second year, \$576,000 the third year, \$600,000 the fourth year, \$640,000 the fifth year, and \$664,640 the

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remaining twenty-five years. In addition, Pan American will pay an annual percentage fee of 10 percent of its airport operator's gross receipts each year in excess of \$5,000,000.

The Port Authority will maintain substantial control over Pan American's operation of the airport. Pan American cannot enter into any agreement for the use and occupancy of the airport or construct any facilities without the consent of the Port Authority.

Pan American plans to develop Teterboro Airport into a modern attractive general aviation airport. Present runways and taxiways are inadequate for future anticipated use. The immediate runway/taxiway improvement program

now under construction, at Pan American's expense if the agreement is approved, will extend runway 1-19 to 7,000 feet and widen it to 150 feet and will extend runway 6-24 to 6,000 feet and widen it to 150 feet. Due to its limited use and the contemplated development of the south area of the airport, runway 14-32 will be converted to a taxiway. New taxiway construction will provide direct access to all runway ends, including a new taxiway the full length of and parallel to the extended runway 1-19. Runway lighting will be improved and centerline taxiway lighting will be provided. The FAA advises that these improvements and clearance of certain obstructions which is included in the improvement program will result in substantial reduction in landing minima.

Pan American has retained the architectural firm of Tippetts-Abbett-McCarthy-Stratton, which has prepared a development plan for Teterboro Airport. The plan, referred to herein as the TAMS report, includes

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improvements requiring total capital cost of approximately \$22,500,000 and envisions the development of the southern part of the airport, containing approximately 150 acres, for a centrally located terminal of approximately 50,000 square feet, two fixed base operator hangars, each containing 126,000 square feet and situated on a 15 acre site, 19 corporate hangars, each containing 20,000 square feet and situated on a one acre site, and public automobile parking, including 400 short-term spaces, 400 long-term spaces, and 350 employee spaces. This development plan includes figures for future operations at Teterboro Airport to provide an indication of income which might be obtained from landing fees, aviation fueling sales, concessions, and other similar sources. The study projects a net operating balance (operating income vs. normal operating and maintenance expenses) of

approximately \$750,000 for the first year and rising to above \$3,000,000 for the fifth year.

The TAMS report envisions a return of 12 percent on Pan American's investment. However, Pan American adjusts further for items of expense not included in that report and estimates a return on investment of approximately 8 percent.

While the term of the agreement will not begin until late 1968, Pan American plans to commence site preparation and some construction work as soon as the Board approves the contract.

The Pan American-Fairchild Hiller Corporation Agreement on Republic Aviation Airport. Republic Aviation Airport, also called Farmingdale Airport, is located to the east of New York City and 1.3 miles east of Farmingdale, New York. This airport is owned by the Farmingdale Company

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and leased by Fairchild-Hiller, which in turn subleases it to Flight Safety, Inc., present operator of the airport. A new lease between Farmingdale and Fairchild and a sublease to Pan American instead of Flight Safety would supplant the existing lease and sublease and would provide for Pan American's operation of the airport. The term of the agreement is five years, with five successive five-year options. The lease terminates if the airport is sold or leased to a public authority.

The agreement provides that Republic would be operated as a public airport in accordance with all applicable laws and regulations and that Pan American shall make the airport and services available on a fair, equal, and not unjustly discriminatory basis, subject to such reasonable fees and charges, and such reasonable rules and regulations as Pan American may lawfully prescribe.

Pan American does not have plans for immediate further development of facilities at Republic because (1) there is a pending law action against Fairchild-Hiller Corporation by the Town of Babylon which might prevent the Airport's use and (2) the State of New York may acquire the airport for further development. Pan American asserts that it is willing to amend its contract and improve and develop facilities if the above two events do not occur.

The applicable law. This proceeding requires consideration of sections 102, 408, and 414 of the Federal Aviation Act of 1958, as amended; section 2 of the Sherman Act; and section 7 of the Clayton Act.

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Section 408(a)(3) makes it unlawful unless approved by order of the Board "For any air carrier *** to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier." Section 408(b) requires the Board, after hearing, to approve such a transaction unless it finds that the transaction will not be consistent with the public interest or that the conditions of section 408 will not be fulfilled. Section 408(b) also contains a proviso that the Board shall not approve such a transaction "which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party" to the transaction. Section 102 provides that:

"In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

- (a) The encouragement and development of an air transportation system properly adapted to the present and future needs of the foreign and

domestic commerce of the United States, of the Postal Service, and of the national defense;

- (b) The regulation of air transportation in such a manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;
- (c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

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- (d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;
- (e) The promotion of safety in air commerce; and
- (f) The promotion, encouragement, and development of civil aeronautics."

Section 2 of the Sherman Act provides that:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 7 of the Clayton Act, as amended in 1950, includes the following provision:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in

any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

The section provides that it is not applicable to transactions approved by the Board.

Section 414 of the Federal Aviation Act provides that:

"Any person affected by any order made under sections 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the 'antitrust laws', as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful

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restraints and monopolies, and for other purposes', approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order."

The effect of this section is to make Board approval carry immunity from the antitrust laws insofar as necessary to enable carrying out of the transaction authorized by the Board's approval. However, it is well settled that the policies of the antitrust laws and their applicability to the transaction are among the considerations which the Board must give appropriate attention and must be mindful of in reaching its decision on the public interest aspects and that the anticompetitive aspect must be balanced against the expected benefits.^{1/}

Positions of the parties and rule 14 participant. Pan American asserts that approval of the agreements would advance the public interest because (1) there is need for development of reliever airports in the New York Metropolitan area, (2) Pan American's Teterboro development will provide a general aviation airport, (3) its Republic proposal will further assist in coping with congestion, and (4) Pan American has had extensive experience in airport construction and operation.

1/ McLean Trucking Co. v. 321 U.S. 67 (1944); Federal Maritime Commission v. Svenska Amerika Linien, Supreme Court of the United States, Nos. 257 and 258, decided March 6, 1968.

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Pan American contends that there has been no showing that approval of the agreements would be contrary to the public interest and (1) that the argument that there is a basic conflict between the airline industry and general aviation is invalid because it is to the advantage of both Pan American and general aviation that Teterboro and Republic be developed, (2) that any merit in the argument that Pan American as a fixed base operator would have unfair advantage over other fixed base operators has been rendered invalid by virtue of Pan American's amendment to its application which will preclude it from engaging in the aviation service business at either Teterboro or Republic, (3) that the argument that Pan American would have unfair advantages in competing with other airlines is answered by the basic terms of the agreements which guarantee operation on a fair, equal, and not unjustly discriminatory basis, (4) that the argument that Pan American would discriminate against light plane traffic at Teterboro has no merit because although anticipated growth of itinerant traffic may require phasing out of local operations (flights which begin and end at Teterboro and do not go beyond a 20-mile radius thereof) the feasibility report prepared for Pan American forecasts a substantial increase in light plane activity. If in fact student operations of the touch and go type would ultimately conflict with itinerant operations, Pan American believes that it would be desirable to assure capacity for the latter.

To support its position that the agreements do not create a monopoly, Pan American asserts that (1) many other airports serve the New York hub area and new and improved facilities are being planned, (2) airport entry is not susceptible to monopoly because airports are typically created or

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developed by governmental entities and Pan American could not prevent New York State, New Jersey, Connecticut, or the Port of New York Authority from future entry into the field. Even if it were assumed for the sake of argument that the agreements created a monopoly, Pan American sees no restraint of competition or jeopardy to another air carrier.

Pan American asserts that it would be unwilling to accept a condition limiting approval to a shorter term than the terms of the agreements because it could not then justify the large investment contemplated which must be recouped through rental payments and fees over a long period of time, that it could not accept a condition requiring that the airports be made available for air carrier operations because it would run counter to the basic concepts and purpose of the agreement, and it could not accept an approval which would exclude portions of the airports and their functions because it would reduce Pan American's revenues to the point that it could not undertake the projects contemplated.

The Port of New York Authority urges approval of the Teterboro agreement on the grounds that the controlling test is the public interest and that the anticompetitive arguments that Pan American will engage in fixed base operations or some other activities inimical to a particular interest or interests have become irrelevant in view of Pan American's exclusion of fixed base operations by it from the scope of the proceeding. It states that it has always regarded Teterboro as a general aviation airport and sought to make it one of the country's outstanding general aviation airport and, that the agreement with Pan American requires that Teterboro be continued as a public airport for that purpose under Pan American's operation.

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It adverts to the plans, under the agreement, for substantial improvements to the airport which will involve an investment of 20 to 25 million dollars by Pan American in the first five years of operation and urges that these improvements are needed for the relief of congestion at the New York area airports and to accommodate the increasing general aviation traffic. It sees the provision of the facilities as resulting in a diversion of general aviation traffic to Teterboro and their development as facilitating handling of the traffic increase. It stresses the urgency of the need and asserts that meeting it promptly is assured under the agreement. But, it says, if the agreement is disapproved, no commitment of the kind Pan American has made has been made by the Port Authority or anyone else, except that the Port Authority will complete the runway, taxiway, and navigational aids improvements.

The Port Authority asserts to be irrelevant the attacks on the economics of the Pan American plan, such as that the proposed rents, fuel revenues, or landing fees are too high or are higher than those fixed elsewhere, because the avowed purpose is to make Teterboro the most attractive general aviation airport and the greatest metropolitan center in the world. It views the airport's status as unique, and finds comparisons with the past and with situations elsewhere to give no proper basis of comparison.

The Port Authority believes that the phasing out of "touch and go" student flight operations in light aircraft will result as the airport is developed further for general aviation regardless of who does it. It considers it as unlikely that an agreement such as that proposed by AOPA will

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ever be made and asserts that approval on that basis would be tantamount to complete loss of the proposed development. The Port Authority refers

to the interim report of the Aviation Subcommittee, Senate Committee on Commerce, January 23, 1968, entitled "The National Airport System," in which the tentative conclusions at page 18 find that the national airport system must include both adequate airports to serve the commercial airlines and their passengers and adequate and separate airports and runways for general aviation aircraft in metropolitan areas where congestion is a serious problem, and that steps should be taken immediately by local airport authorities and Federal regulatory agencies to alleviate the congestion that exists today at major metropolitan airports caused by extensive general aviation use and peak-hour scheduling practices of the commercial airlines. The Port Authority asserts that the proposed Teterboro contract involves an attempt to take a major step towards resolution of the conflict between general aviation and scheduled air carriers in the New York Metropolitan Area.

The Port Authority does not believe that the fact that the operator of the airport would be an air carrier is significant in the present situation. It points out that the facilities are and will continue to be general aviation facilities; that two governmental agencies (Federal Aviation Administration and the Port Authority) will be overseeing the operation by Pan American; and that if Pan American undertook any activity at Teterboro which any segment of general aviation deemed inimical to its interests, there would be avenues of appeal. According to it, Pan American would not

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take any such inimical action, because the success or failure of the Teterboro operations is dependent upon the carrier's ability to make those facilities as attractive as possible to general aviation and its interest as an air carrier in relieving congestion at the other airports will work in favor of inducements to general aviation to use Teterboro. The Port

Authority argues that fears that Pan American at Teterboro may be oriented towards the more lucrative portion of general aviation operations would be applicable to any operator at Teterboro. The Port Authority rejects the monopoly of New York airports argument of the opposition on the grounds that the controls retained by the Port Authority are real and substantial and will be fully exercised, and that in any event the Butler list of airports in the New York area is too limited and that the list of the Department of Transportation, which adds Westchester County, Morristown and MacArthur Airports, shows there is no monopoly. It asserts that to even approach a monopoly Pan American would require control of other airports, a control it cannot obtain without additional approval of the Board.

The Department of Transportation appeared under rule 14(b) of the Board's Rules of Practice, submitted responses to requests for evidence which were made by the parties, and filed a statement on the issues. It stresses the fact that New York area air space and airports are highly congested and that improved general aviation facilities in the New York Metropolitan Area are badly needed to alleviate this congestion. It observes that if a substantial number of general aviation operations which normally use Kennedy, LaGuardia, or Newark Airports were to use Teterboro or Republic Airports there would be a reduction in demand at the three

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major airports and a reduction in delay at peak hours. The Department sees the availability of Teterboro and Republic for IFR operations producing a net increase in the IFR capacity for the New York terminal area and the proposed improvements at Teterboro providing further congestion relief.

The Department argues that the expenditure of funds by the private sector of the economy for the development of reliever airports should be

encouraged and makes specific reference to the approximately \$20 million which Pan American plans to invest. In summary, the Department believes that Pan American's undertaking to operate the two airports for thirty years and its proposal to invest substantial sums of money in their improvement will lead to significant reductions in the existing and forecast congestion at the major New York airports.

The Bureau of Operating Rights recommends approval of the agreements subject to the condition agreed to by Pan American to the effect that it shall not engage in the aviation service business and also subject to conditions that (1) the Board shall retain jurisdiction over the proceeding and (2) the approval shall be limited to a ten-year period. The Bureau believes that the development of Teterboro and Republic is in the public interest because it will make the airports more attractive for general aviation users and will reduce general aviation usage of the three air carrier airports. It commends Pan American's proposal to improve Teterboro to make it a modern, attractive, and functional site for both locally-based and transient operations. It considers Pan American's operation of the airports to have no monopolistic or restraint of trade aspects because Pan American could not compete in fixed-base operations. Bureau counsel believes that the anti-discriminatory clauses within the agreements would prevent any discrimination or unfair practices and that the FAA would be able under the Act and its regulations to prevent or curtail any monopolistic or unjustly discriminatory practices which might develop. The Bureau asserts that the situation is novel, however, in that such future developments as VTOL and STOL operations dictate that a period of experimentation should be permitted for ten years to permit the Board and industry to gain more experience with the situation. It believes that this

period would be sufficient to protect Pan American's investment.

Butler characterizes itself as aviation's largest line service company. It has also expanded its maintenance and avionics capabilities in recent years. One of its aviation service facilities is located at LaGuardia. Butler contends that a major airline should not be permitted to control the reliever airports in the New York area when the airlines and general aviation are in a conflict for the use of limited airport space and air space. It sees these agreements as permitting Pan American to dominate and control access to and the use of the general aviation airports and facilities in the New York area because Pan American has unlimited powers to set rates and make leases and issue franchises to operate and to make and enforce rules and regulations. These powers are especially dangerous in its picture because they are superimposed upon Pan American's already dominant position in air transportation and its position in the sale of high performance corporate aircraft. In Butler's opinion the problems created by these powers are not eliminated by Pan American's assurance

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that the airports will be operated as public airports and the sponsor's assurances imposed under the FAA and the Federal Airports Act do not solve the problem. Pan American's powers are far greater than in the usual antitrust case according to Butler.

Butler further contends that the agreements create a monopoly and restrain competition in the immediate New York area in violation of section 408(b) of the Act and the antitrust statutes. It says that Teterboro Airport is the only general aviation airport reasonably accessible to the Manhattan area. It argues that the Manhattan area represents a significant market area, the airports available for general aviation in the New York area are becoming more limited, and other airports within or immediately

outside the Port of New York Authority area either do not have adequate facilities for high-performance aircraft or are too far away to be fully competitive (Butler argues that airports for high performance aircraft represent a significant line of commerce). Butler sees Pan American's control at Teterboro as giving it a monopoly over general aviation airports, monopolistic power in the sale of high-performance aircraft in the New York area, control of the flow of general aviation passengers connecting to the airlines, and ability to monopolize and substantially lessen competition in fixed-base operations at these airports.

Butler takes the position that airports developed with public funds should not be operated as private property.

Under Butler's approach, the Pan American agreements offer no public interest benefits which override the opportunities for predatory practices. It points out the Board's duty to decide whether benefits outweigh antitrust

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violations. It argues that Pan American has made no definite commitment to any specific capital improvements at either airport and that Pan American has not established that the improvements could be developed on a sound economic basis. It believes that the Port of New York Authority will continue to operate Teterboro and improve its facilities if the Pan American agreement is disapproved, and contends that there is no need for Pan American to operate Republic because the New York Metropolitan Transit Authority plans to acquire and develop that airport.

The Aircraft Owners and Pilots Association is a non-profit corporation of over 140,000 individual aircraft owners and/or pilots. It estimates that its members own 80 percent of the approximately 107,000 active civil aircraft of the United States. AOPA takes the position that both agreements are contrary to the public interest, but believes approval of the

Teterboro agreement would be justified if it were restricted to the land area necessary to accommodate the improvements Pan American contemplates.

AOPA objects that it is Pan American's intent to restrict use of Teterboro by light aircraft and student operations, that the fee schedules in Pan American's exhibits are so high they will economically deter users of light aircraft, that they are higher than those now in effect at Teterboro, that they exceed fees charged by other general aviation airports in the New York area or by the nation's busiest general aviation airports. It argues that

all segments of the general aviation community should be accommodated there.

AOPA opposes approval of the agreement with respect to Republic on the ground that it would be better to wait for the Metropolitan Commuter Transit Authority to acquire and operate this airport as a general aviation facility as recommended in its report to the Governor of New York. AOPA also feels

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apprehensive about Pan American's entrance into the general aviation service industry because none of the present operators can match Pan American in economic power. In addition, it does not believe that the airline industry should be allowed to control access and use of general aviation facilities in view of the conflict between the two industries for the use of airport space and air space.

The National Aviation Trades Association is the largest trade association with respect to numbers of members and coverage of the interests in the aviation and air transportation industry devoted to representation of commercial interests and operators. The National Aviation Trades Association opposes the agreements on the ground that they are unlawful delegations of governmental functions, police powers, and power to regulate airports. It supports Butler's contentions with respect to monopoly and restraint of competition. NATA contends that it

is inconsistent with the public interest to force its members to be under the domination and control of an organization whose interests conflict with those of its members. NATA also views approval of these agreements with alarm because of its fear that the decision would constitute a precedent opening the door to similar arrangements and possible abuses throughout the United States.

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Congestion at New York Metropolitan Area airports and the State's plan of action. The Board's order setting this matter for hearing recognized the difficult problems of congestion that currently exist at the major airline airports serving the New York Metropolitan Area.

The major New York airports are among the busiest and most congested in the world. Kennedy now has typical peak hour delays of 30 to 60 minutes which will increase to about two hours by 1970. Delays of one hour are forecast for Newark by 1972 and for LaGuardia a year later.

The Federal Aviation Administration forecast in 1967 that total aircraft operations at the New York hub airports would increase from 2,389,100 in 1965 to 3,753,200 in 1970, 5,463,800 in 1975, and 8,025,500 in 1980. This includes scheduled air carrier operations totaling 588,900 in 1965, 828,500 in 1970, 1,050,700 in 1975, and 1,395,500 in 1980, and general aviation operations totaling 1,771,800 in 1965, 2,899,800 in 1970, 4,389,200 in 1975, and 6,606,100 in 1980. A small number of military operations are also forecast (less than one percent). Approximately 60 percent of the general aviation operations are local (to or from a point in the immediate area) and 40 percent itinerant.

The Federal Aviation Administration forecast of New York hub air traffic made in August 1967 shows the 1965 base year traffic of 11,600,000 enplaned scheduled air carrier passengers increasing to 21,149,000 in 1970,

36,179,000 in 1975, and 61,048,000 in 1980. During the same period general aviation passengers are forecasted to increase from 725,000 in 1965 to 1,315,000 in 1970, 2,158,000 in 1975, and 3,421,000 in 1980. Thus, the

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scheduled air carriers transport the overwhelming bulk of travelers. The situation in the air is different from that in highway transportation, in which the private automobile is utilized by many times the number of bus travelers.

The March 1967 report to the Governor of New York by the Metropolitan Commuter Transportation Authority set forth the problem as follows:

"The need for a new commercial aviation airport, or 'jetport', and for additional general aviation facilities in the Metropolitan Region is critical.

The air traffic problem, particularly as it relates to existing major airports--John F. Kennedy, LaGuardia and Newark--is becoming more intolerable daily. Action to relieve air traffic congestion is long overdue, both from the viewpoint of present and future air operations and the economic development of the region."

"Aircraft Movements

In the New York Region--

--In 1955 there were over 531 thousand aircraft movements at the region's three major airports

--By 1965 the number increased to over 855 thousand

--By 1970 the total will reach 1,014,000, and,

--By 1980 there will be a total of 1,363,000

Both commercial aviation and general aviation are growing.

General aviation in the nation is growing at an even faster rate than commercial aviation. Last year more than 95,000 general aviation aircraft flew four times as many hours and twice as many miles as the approximately 2,000 aircraft operated by the commercial airlines.

By 1970, at the region's three major airports, general aviation will comprise approximately 37% of total movements--by 1980, this will increase to 42%. Translating all aircraft movements at the three major airports into terms of Instrument Flight Rules (IFR) at peak-hour demand, by 1970 the forecast is for 206 movements per peak hour, exceeding capacity by 33 movements; and by 1980, the expected 285 movements per peak hour will exceed capacity by 112."

"Operational Delays

The outlook for the future in terms of arrival and departure delays is equally grim. At the three major airports today, the current delay is from 10 to 20 minutes. At Kennedy Airport, delays frequently reach 30-40 minutes.

By 1970, the prediction is for a 2 HOUR delay at John F. Kennedy Airport, an obviously impossible situation."

The report went on to state that 26,000,000 passengers used the region's three major airport facilities and that the figure would reach 40,000,000 by 1970 and 65,000,000 by 1980. It asserted that the region must have additional and expanded airport facilities at the earliest possible date and that failure to provide these new facilities would mean not only air traffic delays but a serious impediment to the economic growth of the region. It concluded that "it is imperative to act now to assure land acquisition for these necessary airport facilities."

A report in February 1968 to the Governor from the same body contains a recommended comprehensive plan and action program of transportation improvements for the New York State portion of the metropolitan region. The program is presented in two phases. The first phase is comprised of items on which work would be fully committed within five years and completed within ten. Cost is estimated at \$1.6 billion, to be financed from State Transportation Bond issue funds, local contributions, public authority contributions, and Federal aid. The second phase is a longer range program to be a logical extension of phase one -- costing \$1.3 billion.

The urgency of starting phase one this year was stressed by the Authority. Phase one includes extensive surface transportation improvements. It also includes (1) construction of a \$100 million spur of the
2865
LIRR to John F. Kennedy International Airport to permit dependable high speed transportation between the airport terminal and Manhattan with con-

nections at Jamaica for Brooklyn, Queens, and Long Island points, (2) development at Republic Airport of a \$25 million air-rail-bus-auto-taxi transportation center which "will provide one of the finest examples of a modern primary general aviation airport and integrated transportation center in the nation." The Republic project involves land acquisition, improvement of airport operations and terminal facilities (including navigational and traffic control) and multi-modal passenger facilities, as well as improved access to the railroad station from the airport, additional automobile parking space, and improved road access and traffic circulation. Excellent rail travel would be available. LIRR express running time to Manhattan will be thirty minutes, (3) a \$12 million general aviation field in Northwest Westchester, (4) a \$12 million general aviation center field and transportation center at Spring Valley.

The benefits and the opposition to the agreements. The opposition of Butler and NATA voiced to the Board in their answers to Pan American's applications for approval of the agreements was couched in terms of the impropriety of entry by Pan American into the general aviation business and the conflict of interest between Pan American as a major air carrier with those of an airport operator, especially at these airports. The former aspect has been removed and the opposition now rests solely on the latter point. They stress the anticompetitive aspects and allege strong antitrust law violations.

2866

The expansion of air carriers into other phases of aeronautics by means of merger with other enterprises or purchase or lease of their assets is suspect under section 408 of the Act and can be approved only if justified by expected benefits that overcome the anticompetitive aspects. A question arises as to what competition exists or has existed which will be affected by the proposed contracts.

The benefits are found in the contribution which Pan American proposes to make in developing reliever airports to alleviate congestion in the New York Metropolitan Area.

The TAMS report prepared for Pan American and submitted herein to establish the economic feasibility of a large scale improvement of Teterboro, contains the following appraisal:

"II. DESCRIPTION OF EXISTING FACILITIES

METROPOLITAN AREA

The airports currently serving the New York Metropolitan Area are indicated in Figure 2. The major air carrier airports are J.F.K. International, LaGuardia, and Newark, administered by the Port of New York Authority. Westchester County Airport in White Plains, and MacArthur Field in Suffolk County are multi-use airports serving local service air carriers. These five airports and Teterboro are the major all-weather airports in the Metropolitan Area, and of these, Teterboro alone is exclusively a general aviation airport. Virtually all of the other airports, except the military airports, are inadequately equipped for handling large aircraft and large numbers of aircraft movements.

Teterboro Airport, which Pan American World Airways proposes to operate as a general aviation airport is a strategically located facility. Manhattan falls almost entirely within a ten mile radius (Fig. 2); a circle with a 20 mile radius drawn around Teterboro encompasses all of New York City, southern Westchester County, all of Bergen and Essex Counties, and major portions of Morris, Passaic

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and Union Counties. This area contains the administrative offices of a large number of business organizations, many industrial facilities, and a major portion of the population of the New York Metropolitan Area."

Teterboro's development will be a significant addition to the steps contemplated in the plan of New York State previously set forth.

The Board's regulation of air transportation generally relies in large measure upon harnessing and directing economic forces which can be expected to lead to desired results which will be in the public interest. Here the desired result is the development of reliever airports which will

serve to absorb some of the pressure of growing numbers of general aviation flights in the New York area.

The parties opposing the merger stress the fact that there is a dispute between general aviation and certificated air carriers over use of limited air space and airport space. They argue that a major airline should not be permitted to control the reliever airports in the New York area. Butler presents much evidence which shows that Pan American has great economic power. It is well known as one of the world's largest air carriers. It spends \$29 million yearly on advertising and is the largest air carrier advertiser in the United States, enabling it to obtain advertising at cheaper rates per page than does Butler. It sells and services Pan Jet Falcons. It has developed good identity and acceptance of its registered trademark through many years of advertising in connection with its passenger service. Pan American is, beyond question, much more powerful as a business force than is any general aviation service company.

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It is difficult, however, to envision the manner in which general aviation would be hurt by allowing Pan American to operate Teterboro. Neither Pan American nor any other certificated air carrier will be conducting operations at Teterboro. Assuming that Pan American, as one of the certificated air carriers, desires to reduce the number of operations by general aviation aircraft at Kennedy, LaGuardia, and Newark, it would appear to be in Pan American's interest to do its utmost to make Teterboro attractive to general aviation so as to bring as many as possible general aviation operations away from the three major airports.

The very conflict of interest which the opponents stress will provide a persistent impetus to Pan American's development of Teterboro as a reliever airport for the congestion at the major New York passenger

airports. Its investment at Teterboro and the return on that investment will perforce be insignificant figures when considered in relation to Pan American's income from its system passengers who originate or terminate at New York.

The opponents contend in effect that an airport such as Teterboro should be operated by a public body such as the Port Authority. Most large airports are. However, it must also be observed that it is the prevailing view in this country that the private sector should operate businesses wherever feasible, subject to such controls by public bodies as are required if economic forces cannot be depended upon to protect the consumer. Such a policy is enunciated, for example, in section 2(b)(1) of the Department of Transportation Act, which states, in part, that Congress

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finds that the establishment of the Department is necessary "to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible." The Department of Transportation urges herein the encouragement of obtaining investing of funds from the private sector.

It is a significant step for a public body to turn over to a private company the operation and maintenance of an airport such as Teterboro on a 30-year contract. But the Port Authority, which owns the airport, has taken this step. The question as to whether it should be an air carrier or some other person is not before the Board because there is no assurance that some other person will come forth. But if it were to come to such a decision the answer is that there are obvious advantages in having Pan American as the operator -- because it has not only the economic drive of desire for profit in developing Teterboro as a reliever airport but also has the stimulus of its need as an air carrier for the development of such airports

to relieve congestion at Kennedy, LaGuardia, and Newark.

In determining the applicability of the antitrust laws the courts look at the monopoly or restraint of trade situation in a relevant product market (line of commerce) or submarket and a relevant geographic market or submarket. Butler argues for consideration as product (line of commerce) markets (1) airports available exclusively for general aviation and which will accommodate high performance aircraft, (2) general aviation passengers from these airports connecting to airline flights, (3) the sale of high performance executive aircraft, and (4) the general aviation service business. As the relevant geographic market it argues for the area under the

2870

jurisdiction of the Port of New York Authority as the area which can reasonably serve Manhattan Island as a prime market for business and executive aircraft activity.

*Product
Mkt*

The strongest of these arguments is that concerning general aviation airports. Teterboro Airport is without question the best and most conveniently located airport devoted solely to general aviation for general aviation travelers to and from Manhattan. The monopoly of the New York Airport market argument looks at the obvious predominance of Teterboro's advantages of proximity to Manhattan and its status as the only all-weather airport within a 10-mile radius devoted solely to general aviation. Pan American argues that there are numerous other airports reasonably near and that some are already all-weather airports or that there are plans for improvement to that status. It points out that Westchester (White Plains) Airport, 26 miles from Times Square, handled more itinerant operations (136,061) in 1966 than any other airport in the New York Metropolitan Area and that it is an all-weather airport. It also refers to MacArthur (Islip) Airport, 40 miles from Times Square, which is an all-weather airport that

handled 127,448 itinerant operations in 1966. Again, it shows that Morristown Municipal Airport, 23 miles from Times Square, accommodated 67,883 itinerant operations in 1966. While not an all-weather airport at this time, plans have been made which would bring it into that status. The plans of the State of New York for development of Spring Valley Airport, 23 miles from Times Square, and Republic Airport have been set out herein and, of course, large numbers of general aviation aircraft use LaGuardia, Kennedy,

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and Newark. While it is true, as Butler urges, that the other airports are not as satisfactory as Teterboro, their availability indicates that there is not a monopoly in Teterboro Airport with respect to service to Manhattan. Moreover, Pan American points out correctly that even if there were there would be no restraint of trade or damage to another air carrier.

The contentions with respect to monopoly of general aviation passengers who connect with airline flights and of the sale of high performance executive aircraft are very weak. While not conclusive of the question, it bears upon the point that neither an air carrier nor any person engaged in the sale of high performance aircraft opposes the application.

Looking at the passenger situation it is doubtful that this can be considered an economically significant market for the purposes of anti-trust examination. Pan American would be interested only in foreign and overseas traffic generated from Teterboro. The record contains no estimate of its volume. However, a survey of Carey Bus patrons in October and November of 1967, introduced in evidence by Butler as material it subpoenaed from Pan American, showed only 0.7 percent of passengers arriving at Teterboro by air as destined for J. F. Kennedy International Airport.

It is true that the TAMS study shows helicopter passengers between Teterboro and J. F. Kennedy Airport or the Pan Am Building in mid-Manhattan,

but there is no showing that the Teterboro connecting air traffic to any foreign or overseas point served by Pan American will be of sufficient volume to constitute an economically significant market. In any event, the anticompetitive aspect is met by the basic terms of the agreement which

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guarantees operation of the airport on a fair, equal, and not unjustly discriminatory basis and the continuing authority of the Port Authority and the FAA. Other air carriers would have appropriate rights to sell their tickets at Teterboro.

Turning to high performance aircraft, it is observed that Butler does not sell such aircraft. On the other hand, Atlantic Aviation Corporation does sell such aircraft and is located at Teterboro. While its president testified that the rentals contained in the TAMS report were too high for Atlantic to make a profit, it has expressed no fears that Pan American would monopolize the high performance aircraft sales market.

The argument that Pan American has the power to monopolize and restrain competition in sale of high performance aircraft in the New York area by virtue of the Teterboro agreement assumes that Pan American will squeeze out Atlantic Aviation Corporation, which is a distributor of such aircraft, and that Teterboro is so important that no one else will be able to compete in the New York area. In fact, Pan American competes now for this market with a facility at Westchester. Teterboro is a good location, but the record does not show that its control results in control of the New York area for sale of aircraft.

The amendment of its application to exclude Pan American from engaging in the aviation service business at Republic or Teterboro effectively removes the possibility of Pan American's monopolizing or restraining competition in that field.

Alternative?

Viewing the present and prospective situations with and without Pan American's proposed improvements, it cannot be found that the effectuation of the Teterboro agreement would result in substantial lessening of competition.

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Butler contends that approval of an arrangement which would substantially lessen competition cannot be approved as in the public interest unless it can be shown that the gain expected from the arrangement cannot reasonably be expected through other means and cites U.S. v. Third National Bank in Nashville, 88 S.Ct. 882, 893 (1968). That case interpreted the Bank Merger Act of 1966, which in connection with approvals of bank mergers, provides in section 5(B) in part, that

"In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served."

Interpreting this section the court held that it "insists that before a merger injurious to the public interest is approved, a showing be made that the gain expected from the merger cannot be expected through other means."

* { The Nashville case rests upon the distinctive wording of the Bank Merger Act. In any event, the present proceeding would meet its tests. First, there is no substantial anticompetitive effect of the agreement. Second, the need for action to aid the congestion is urgent and disapproval of the merger would either delay substantially or postpone indefinitely the improvements planned by Pan American.

NATA presents an argument to the effect that the proposed lease is unlawful because the Port Authority would illegally delegate its governmental and police power functions and illegally surrender the power to,

control public airports to a private individual.

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This contention is in a similar category to the contentions at the prehearing conference that the hearing should include the trial of issues as to whether the agreement violates certain sections of the Federal Aviation Act which are administered by the Federal Aviation Administration. It was concluded that the matter of enforcement thereof would be left to that agency and not tried herein. It is infeasible in a proceeding such as this to examine all possible legal and statutory aspects of a proposal. The Port Authority believes that it has the power to make the agreement. The Board's decision as to legality in this respect would not be dispositive of that issue. These issues are in contrast to antitrust issues. The Board's approval would grant immunity and the policies of the antitrust statutes are for consideration in reaching a decision on the public interest.

The Board is asked to deny the application on the ground that Pan American will obtain profits because of the leverage of public funds invested in Teterboro (\$10,500,000 by the Port Authority and \$1,500,000 by the Federal Aviation Administration). However, the Port Authority participated herein as a formal intervener. The FAA is within the Department of Transportation, which participated under rule 14 and submitted its statement of position substantially supporting approval of the agreements. Pan American has agreed to pay a minimum rent averaging in excess of \$500,000 yearly in the first five years and over \$650,000 yearly for the remaining 25 years of the 30-year term. There is no showing that this is not a reasonable compensation to the Port Authority.

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Butler sees it as sinister that at one stage the parties considered an agreement under which Pan American would be the major tenant at the airport rather than its operator, and that the final agreement is for

complete operation of the airport. AOPA wants the Board to approve the agreement limited to the land needed for the facilities Pan American would construct. This would be so different an arrangement from that before the Board that approval on this condition would be tantamount to disapproval of the agreement.

The opponents contend, and the record shows, that Pan American has made no definite commitment to the specific capital improvements at Teterboro shown in the TAMS report. They show that a "Blue Book" in Pan American's files and introduced in part with Butler's evidence contains a forecast which is considerably lower than that in the TAMS report. They argue that the rentals and fees to be charged under the TAMS proposal are too high and that the plan is economically infeasible. The President of Atlantic Aviation testified that the rent set forth frightens him and he doubted that it would be possible to operate a facility with those charges on a sound economic basis. The record does not permit determination of the question. The study was prepared by an architectural and engineering firm and contains considerable detail. However, the TAMS witness who testified concerning the report had not made any study to determine whether general aviation could pay the fees and rentals. Pan American counters that it has not adopted the TAMS report in full detail but that it intends to develop Teterboro substantially as proposed therein. It has not decided on the precise fees but it believes them to be reasonable. It shows them to be lower than those at the jetports.

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While Pan American has not committed itself to this plan in all its details, it would appear that the other factors in the situation will lead it to carry out the plan substantially. It has committed itself to pay annual fees to the Port Authority starting at \$320,000 and increasing

yearly to \$664,000 after the fifth year. This commitment and its own need as an air carrier for relief of the congestion at the major airports will be very effective forces which can be expected to reinforce its announced intent to improve the airport.

AOPA is concerned that Pan American will restrict the use of Teterboro for light aircraft and student operations. The TAMS report forecasts an increase in light aircraft movement. Pan American's witness testified that it intends to accommodate light plane operations other than touch and go and local operations. Pan American acknowledges that if total operations grow to a point that local and student operations conflict with itinerant operations it believes in the desirability of assuring capacity for the latter. It cites the shortage of facilities for itinerant flights and the availability of smaller and less well equipped airports suitable for practice by students. AOPA's feared increases of fees will probably be necessary at Teterboro because of the expense of needed improvements regardless of who accomplishes the improvements.

The TAMS report proposed that local movements be phased out by 1971 and is in line in this respect with the Metropolitan Commuter Transportation Authority Report of February 1968, which contains a conclusion that a limited capacity airport in Suffolk County will ultimately be needed to relieve the proposed Republic Airport of future instructional and recreational flight activities.

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The public interest question with respect to Teterboro comes down to resolution on an appraisal of the relative importance of a few basic considerations. Qualms necessarily arise over giving control for thirty years of publicly-owned Teterboro to a private firm who must needs operate it for profit on its investment. The future may well require decisions in which the best interests of the public would be served more by a partic-

ular course of action whereas the most profitable course of action may be in another direction and Pan American will be drawn to it in order to obtain appropriate return on its investment. Continued operation by a public body might avoid this resting of the future of Teterboro solely on the fees paid by general aviation. For example, the Interim Report of the Aviation Subcommittee to the Committee on Commerce, U. S. Senate, January 23, 1968, concluded that the scheduled air carriers should bear some of the cost of establishment of reliever airports for general aviation. On the other hand, the need for immediate action to develop reliever airports in the New York area as soon as possible is recognized by all. While the Port Authority will continue to operate Teterboro, there is no assurance that it will improve it as Pan American plans to do. Even if it should, or could get some other person to do so, a substantial time to make plans and get started would be required. Pan American is prepared to go forward as soon as the Board's approval is forthcoming. Considering the urgency of the need and

2/ It is recognized that resources can be allocated to use as the public desires by cross action of economic forces and prices. However, a fully competitive situation to permit this end is not present here.

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the fact that the contract contains provisions requiring service on a fair, equal, and not unjustly discriminatory basis to all users, and fair, reasonable, and not unjustly discriminatory prices for each unit or service, it is concluded that the benefits are far greater than the anticompetitive effects and that approval is in the public interest.

Bureau counsel proposes a ten-year approval because it finds the situation novel and believes this will allow an appropriate period of experimentation until the Board and the industry has had more experience with the matter. Pan American states that it would not accept approval

on this basis because it could not then justify the large investment which it contemplates. The TAMS plan is based on an amortization period of twenty years for all improvements, and the agreement's provision for a percentage fee on gross receipts allows an exclusion of amortization on a twenty-year life. This is a reasonable average amortization and on this basis Pan American would have recouped only 50 percent of its investment in ten years. The carrier could not be expected to make the needed substantial investment on that basis. It is concluded that this proposed condition is not justified.

Bureau counsel appropriately proposes that the Board retain jurisdiction. It is also appropriate to include a condition against use of the approval herein as a basis of augmenting Pan American's investment for ratemaking or other regulatory purposes.

A different conclusion is indicated concerning Republic airport. The anticompetitive aspect is not offset by any significant advantage. Pan American plans to continue operation of the airport but has no plans

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for its development because of pending litigation and the proposed acquisition by the State of New York. Pan American states that it would be willing to amend the agreement and develop Republic in the event the state does not acquire it. However, the Governor of the state has recommended acquisition and improvement in his budget message and it does not appear necessary at this time to authorize Pan American's operation in the face of the anticompetitive aspects of adding another increment towards Pan American's control of airports in the New York area.

Even if the state does fail to acquire the airport, the circumstances would be far different from those surrounding Teterboro. Pan American has not prepared any study or plan of improvement for Republic such as the TAMS

report prepared for Teterboro. It would have the same problem as anyone else of the substantial time required to make plans and get started. Thus, there is no proposal here which will result in immediate action towards relief of the congestion in the New York area. While Pan American argues on brief about a danger of loss of the location to aviation use, it cites no evidence to support this claim. It is concluded that approval of the Republic agreement as now presented would not be in the public interest.

Ultimate findings. In the light of the foregoing facts, findings, and conclusions and all the record, it is found that:

1. The agreement between Pan American World Airways, Inc., and the Port Authority, subject to a condition against Pan American's engaging regularly in the aviation service business except for its sale, ownership, and operation of aircraft, will not be inconsistent with the public interest, will not result in creating a monopoly or monopolies and thereby restrain

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competition or jeopardize another air carrier not a party to the acquisition, and should be approved.

2. The agreement between Pan American World Airways, Fairchild-Hiller Corporation, and Farmingdale Company for lease and operation of Republic Aviation Corporation Airport will be inconsistent with the public interest and should be disapproved.

3. The Board should retain jurisdiction to impose such further conditions as may be found reasonable and should attach the customary condition against use of the approval as a basis of augmenting Pan American's investment for ratemaking or other regulatory purposes.

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Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Issued under delegated authority

Pan American World Airways, Inc. :
Farmingdale and Teterboro Airport : Docket 19045 Et Al.
Operation :

O R D E R

A full public hearing having been held in the above-entitled proceeding and the Examiner, upon consideration of the record, having issued an initial decision containing his findings and conclusions, pursuant to authority delegated to Hearing Examiners under Rule 27 of the Rules of Practice in Economic Proceedings, which initial decision is attached hereto and made part hereof;

IT IS ORDERED:

1. That the application of Pan American World Airways, Inc., for approval of its agreement with Fairchild-Hiller Corporation and Farmingdale Company, for lease and operation of Republic Aviation Airport, Docket 19045, be and it hereby is denied.

2. That, subject to the conditions specified below, the application of Pan American World Airways, Inc., for approval of its agreement with the Port of New York Authority for operation of Teterboro Airport, Docket 19046, be and it hereby is approved.

3. That the approval is subject to the following conditions:

- (a) Except in connection with aircraft which it may sell, own or operate, or on a casual, infrequent or emergency basis, Pan American will not engage in the aviation service business at Teterboro Airport; provided however, that Pan American may provide such services for a period up to 90 days if necessitated by failure of persons normally engaged in such activities to provide such services. For the

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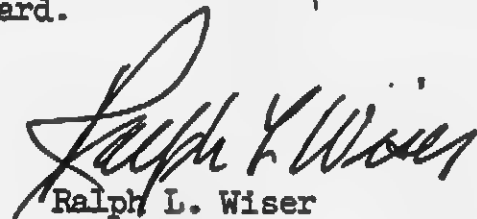
purposes of this order, aviation service business involves principally the following activities:

(1) the sale to users of aircraft fuel and lubricants; (2) the delivery of fuel into aircraft; (3) aircraft maintenance and repair; (4) the sale and installation of avionics; (5) the provision of hangar storage and outdoor tie-down locations for aircraft (Pan American reserves the right also to provide hangar facilities and public tie-down services); and (6) the performance of turn-around services.

- (b) Approval shall not, in any manner, be relied upon by Pan American as a basis for augmenting its investment for ratemaking or other regulatory purposes; nor shall such approval be deemed a determination, for ratemaking or other regulatory purposes, of the reasonableness of any costs or charges of the transaction.

4. That jurisdiction over the proceeding is hereby retained for the purpose of imposing at any time, with or without hearing, such further conditions as may be found just and reasonable.

5. That this order shall become effective as the final order of the Board on the 31st day after the date of service hereof and the initial decision attached hereto unless a petition for discretionary review is filed within 25 days after service hereof in accordance with Rule 28 of the Rules of Practice in Economic Proceedings (14 CFR 302.28) or the Board issues an order to review upon its own initiative. If a petition for discretionary review is timely filed or if action to review is taken by the Board upon its own initiative, the effectiveness of this order shall be stayed until further order of the Board.



Ralph L. Wiser
Associate Chief Examiner

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BUTLER AVIATION
PETITION FOR DISCRETIONARY REVIEW

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CERTIFICATE OF SERVICE

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* * *

However, if the Board does approve this agreement, it should subject it to the following additional conditions:

1. PanAm shall not directly or indirectly negotiate, grant, renew, modify, terminate, recommend, or take any other action with regard to leases, franchises, or operating agreements at Teterboro Airport but shall leave all such matters solely to the Port Authority.

2. PanAm shall not directly or indirectly raise, lower, or establish in any manner rates, fares, charges, and fees at Teterboro Airport, but shall leave all such matters solely to the Port Authority.

3. PanAm shall not directly or indirectly make, amend, terminate, or take any other action with regard to rules and regulations at Teterboro Airport, but shall leave all such matters solely to the Port Authority.

4. PanAm shall not directly or indirectly use its control over Teterboro Airport in any manner whatsoever to control or influence air passengers to use its scheduled airline services as distinguished from those of other carriers.

5. PanAm shall not directly or indirectly interfere with or inhibit in any manner whatsoever any air carrier or other person from transporting air passengers between the Teterboro Airport on the one hand, and the scheduled

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services of other air carriers at the LaGuardia Airport, Kennedy International Airport, or Newark Airport, on the other hand.

6. PanAm shall not restrict or restrain in any manner whatsoever, or discriminate against, any class of aircraft, aircraft operations, or aircraft operators at the Teterboro Airport.

7. Any proposed changes in the existing agreements shall be submitted to the Board for prior approval before consummation.

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APPENDIX A

AIR TRANSPORT ASSOCIATION OF AMERICA



1000 Connecticut Avenue, N.W., O. Washington, D. C. 20036

Area Code 202 462-3300

WILLIAM A. WELSH, Vice President-Public Relations ROBERT E. NEWCOMB, Director of Public Relations

FOR IMMEDIATE RELEASE

AIRLINES URGE PRIORITIES TO EASE CONGESTION CRISIS

WASHINGTON, D. C., July 23--The airline industry today called on the Federal Aviation Administration to establish a system of priorities at the nation's crowded air terminals as a step in solving the air transportation congestion crisis.

Stuart Tipton, president of the Air Transport Association, said in a letter to David D. Thomas, acting administrator of the FAA, "the priorities, of course, would give precedence to transport aircraft carrying 100 passengers, for instance, over that of a private aircraft carrying a handful of persons or less." Tipton also urged the FAA to take action right away to "protect millions of the flying public from massive dislocation, delay and hardships at a very small cost to the private users of the airspace."

The text of the letter:

"Your letter of July 17, 1968, underscores the fact that airways and airport facilities are falling behind the demand at some of our larger air terminals. Since your letter, the situation has grown worse and reports of last week-end, particularly from the New York area, indicate that delays to passengers in that area have reached a crisis level.

"Since the scheduled air transportation industry is charged with the responsibility of serving the public, these delays are a matter of enormous concern to us. It is unfortunate that the bulk of the delay is being forced upon a segment of the public which has little alternative to the delay. Hundreds of thousands of passengers use air transportation daily and most of them have no real choice but to use this form of public transportation.

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"When a congestion crisis such as the one we now are experiencing occurs, it is this very public which suffers first and suffers longest. The usefulness of the air transportation system, therefore, is denied in the crisis to those who must depend upon it the most. Only a small segment of the population can afford to own and operate private aircraft.

"I must, therefore, urge that the government, through the FAA, protect the traveling public by a system of priorities at the more crowded terminals. These priorities should be applied whenever the demand for airway or airport capacity equals or exceeds the supply. The priorities, of course, would give precedence to transport aircraft carrying 100 passengers for instance, over that of a private aircraft carrying a handful of persons, or less.

"Such priorities will not create any hardships for the other users of the airspace, for there are roughly 10,000 airports in the United States, of which 3,000 could be considered useful for regular air commerce. The scheduled air carriers use only a little more than 500 of these airports; the balance are used only by private aviation. The 500-odd airports used by commercial airlines are also used by private aviation, of course.

"Of the airports used by the commercial airlines, only a very few have a congestion problem. The priorities, therefore, needed to protect the flying public from future hardships would affect only a handful out of 10,000. Establishing a priority system would be an immediate step taken by the FAA to relieve the already serious and growing congestion problem.

"If this were done right away, it would protect millions of the flying public from massive dislocation, delay, and hardships at a very small cost to the private users of the airspace. I feel that the FAA as the operator of the nation's airway system should put this measure into immediate practice for the benefit of all users."

- ATA -

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APPENDIX B

NEWS from **THE PORT OF NEW YORK AUTHORITY**

PUBLIC AFFAIRS DEPARTMENT
111 Eighth Avenue, New York, N.Y. 10011

Warren H. Goodman
Public Relations Director

Telephone: 620-7541

FOR IMMEDIATE RELEASE
July 12, 1968

New York, July 12 - The minimum flight fees at Kennedy International, LaGuardia and Newark Airports during peak hours will be increased, effective August 1, to reduce congestion and delays and enable the airports to provide the greatest service to the greatest number of the traveling public, it was

announced today by Austin J. Tobin, Executive Director of The Port of New York Authority.

Mr. Tobin pointed out that aircraft delays at the three major airports during peak hours now run from 45 minutes to two hours or more and that the average delay could grow to two hours within the next two years if current trends continue. Such delays in the New York/Newark area affect the entire national air transportation system. Hundreds of aircraft throughout the United States may be prevented from taking off or have their flight patterns affected materially because of the inability of the New York complex to accommodate additional traffic.

The Port Authority announced last November its plans for the new fee structure, to influence general aviation traffic, which does not provide mass transportation service, to transfer operations, whenever possible, away from the runways and air traffic control patterns at the three major airports during peak periods. The plans were not implemented at that time to provide for discussions with the air taxi industry and other general aviation interests and to give them time to adjust their operations and schedules to the revised fee structure. The plan also has been discussed with the airlines,

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the Federal Aviation Administration and other interested parties. It is imperative to institute the peak hour fee now in order to alleviate congestion during the remaining period of heavy summer air traffic.

New peak hour fee schedule

The minimum take-off fee at present at the three airports is \$5. The new minimum fee of \$25 at Kennedy International, LaGuardia and Newark Airports will apply to each aircraft which either lands or takes off during the periods

between 8:00 A.M. and 10:00 A.M. Monday through Friday, and from 3:00 P.M. to 8:00 P.M. every day. The increased minimum fee will not apply to Teterboro Airport where the fee is \$1.50 for aircraft under 2,500 pounds and \$2.50 for all other aircraft.

The new minimum fee at the major airports will apply to aircraft operating with a seating configuration of less than 25 passengers. It will not apply to helicopters since they operate in patterns which do not contribute significantly to air traffic congestion nor do they adversely affect airport capacity.

Air taxi operators which regularly serve airline connecting passengers at Kennedy International Airport will be able to obtain Port Authority permits under which they would not be charged the new peak hour rate whenever their aircraft operate from Kennedy Airport runways not being used by scheduled airlines.

Purpose of new fee schedule

By establishing a minimum take-off fee of \$25 during peak periods, it is hoped to encourage:

- Small private aircraft to cease their use of the three commercial airports during peak periods by flying at other hours or using alternate general aviation airports in the metropolitan area.

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- General aviation operations, such as air taxi, to use other general aviation airports, including Teterboro, as an alternate for LaGuardia for air passengers with Manhattan origins and destinations.
- General aviation operations, such as air taxi, to convert to operations with VTOL or STOL aircraft, particularly to accommodate air passengers connecting with airlines at the three airports. If present efforts of the FAA to develop air traffic control patterns for VTOL and STOL

aircraft, independent of existing runway patterns at the three airports, are successful, then the use of these types of aircraft may offer an acceptable alternative for such operators if coupled with lower minimum take-off fees.

Many of the general aviation movements are conducted in small aircraft carrying very few air passengers, usually between one and four persons. These movements occupy air space and runway capacity which could otherwise be utilized by much larger commercial aircraft transporting many more air passengers.

The Port Authority has received assurances from United States commercial airlines operating a majority of the plane movements into and out of Kennedy, Newark and LaGuardia Airports that they do not intend to increase their 1968 summer schedules as now published or to shift any of their schedules from the off-peak hours of the day to peak periods to which the increased minimum fees will apply. These same airlines have stated that they do not intend to increase schedules during peak periods of the summer of 1969 over those in effect during similar peak periods in the summer of 1968.

Although the separation of general aviation and airline traffic during peak operating hours will provide some relief, it will not forestall the pressing need for a fourth major airport to serve the area. Until a fourth major airport is developed to accommodate the aviation needs of the Port District, the Port Authority must, in the public interest, make every

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effort to ensure that its limited airport facilities are utilized, improved and operated to provide the greatest benefit to the greatest number of persons through the efficient operation of mass air transportation.

end

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SERVED SEP 26 1968

PAN AMERICAN WORLD AIRWAYS, INC.
FARMINGDALE AND TETERBORO AIRPORT
OPERATION

DOCKET 19045, 19046

Decided: September 25, 1968

Review without further proceedings granted with respect to that portion of the initial decision relating to approval of the agreement between Pan American World Airways, Inc., and the Port of New York Authority for operation of Teterboro Airport (Docket 19046).

Pan American agreement with the Port of New York Authority for operation of Teterboro Airport (Docket 19046), approved subject to conditions, and retention of jurisdiction.

Initial decision shall become effective with respect to that portion denying approval of Pan American agreements with Fairchild-Hiller Corporation and Farmingdale Company, for lease and operation of Republic Aviation Airport (Docket 19045).

Motion of Butler Aviation Company to reopen the record for the receipt of additional evidence, granted.

APPEARANCES: Same as in the examiner's initial decision.

OPINION

BY THE BOARD:

In this proceeding, Pan American World Airways, Inc. (Pan American) seeks approval of (1) its application in Docket 19045 with respect to its agreement with Fairchild-Hiller Corporation and Farmingdale Company for the lease and operation of Republic Aviation Airport in Farmingdale, Suffolk County, New York, and (2) its application in Docket 19046 with respect to its agreement with the Port of New York Authority (Port Authority) under which Pan American will operate Teterboro Airport at Teterboro, New Jersey. On May 10, 1968, Associate Chief Examiner Ralph L. Wiser issued his initial decision herein in which he denied the application with respect to the lease and operation of Republic Airport (Docket 19045), and approved, subject to conditions,^{1/} the application with respect to the agreement with the Port Authority for operation of Teterboro Airport (Docket 19046). Petitions for discretionary review of the initial decision with respect to the approval of the Teterboro agreement have been filed by Butler Aviation

^{1/} The conditions included one introduced by Pan American as an amendment to its application precluding the carrier from engaging regularly in the aviation service business at Teterboro, except in connection with aircraft it may sell, own or operate. Also imposed was an accounting condition, and jurisdiction was retained for the purpose of imposing further conditions as may be found just and reasonable.

Company (Butler),^{2/} National Aviation Trades Association (NATA),^{3/} Aircraft Owners and Pilots Association (AOPA)^{4/} and the Bureau of Operating Rights (Bureau). Butler and NATA urge disapproval of the agreement.^{5/} AOPA and the Bureau seek imposition of conditions proposed by them which were rejected by the examiner. No petitions for review with respect to the examiner's denial of approval of the Republic Airport agreement have been filed.

Answers were filed by Pan American and the Port Authority urging that the petitions for review be denied. The Port Authority alternatively urges that if review is granted the Board issue a final order without further proceedings in accordance with Rule 28(d).^{6/} In addition, Butler filed a motion to reopen the record for receipt of additional evidence.^{7/}

^{2/} Butler characterizes itself as aviation's largest line service company, and one of its aviation service facilities is located at LaGuardia.

^{3/} NATA is a trade association representing the general aviation service industry.

^{4/} AOPA is a non-profit corporation of over 140,000 individual aircraft owners and/or pilots, which estimates that its members own 80% of the approximately 107,000 active civil aircraft in the United States.

^{5/} NATA alternatively proposes conditions to approval.

^{6/} Both Pan American and the Port Authority refer to the statement in the Board's Order E-26190, December 28, 1967, setting this matter down for hearing, that because of the effect of this application on the problem of congestion at the New York metropolitan airports, there is substantial public interest in resolving the issues as speedily as possible.

^{7/} The proffered evidence consists of Press Releases dated July 12 and July 23, respectively, reflecting the action of the Port Authority in increasing minimum landing fees during peak periods at the New York jetports from \$5 to \$25, effective August 1, 1968, and the position of ATA that scheduled airlines be given priority over private aircraft at congested airports. Answers filed by the Bureau, Pan American and the Port Authority do not oppose receipt of such evidence into the record. Accordingly, we shall grant Butler's motion.

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Upon consideration of the matters presented, the Board has determined to review the initial decision, without further proceedings, with respect to approval of the agreement between Pan American and the Port Authority concerning operation of the Teterboro Airport. In view of the extensive nature of the proceedings before the examiner, and the nature of the issues raised in the petitions for review, the Board finds that further proceedings are not warranted.

Teterboro is an all-weather general aviation airport located about 10 miles from midtown Manhattan. It is presently owned and operated by the Port Authority. Although there are a number of other all-weather airports in the area, Teterboro is the only one devoted exclusively to general aviation. Negotiations concerning Pan American's operation of the airport commenced in 1964 and culminated in the agreement of September 19, 1967. Basically, the agreement provides that Pan American shall be responsible for the operation of the airport as a public general aviation airport on a non-discriminatory basis for a term of 30 years, subject to certain retained control of the Port Authority.

The examiner found that the contribution Pan American proposes to make in developing Teterboro as a reliever airport which would alleviate congestion in the New York Metropolitan Area, constituted a substantial benefit in the public interest. He also found that the effectuation of the Agreement would not result in a monopoly or result in any substantial lessening of competition or jeopardizing any other carrier. The examiner concluded that considering the urgency of the need and the fact that the contract contains provisions requiring service on a fair, equal, and not unjustly discriminatory basis to all users, and fair, reasonable, and not

unjustly discriminatory practices for each unit or service, the benefits are far greater than any anti-competitive effects, and approval of the agreement would be in the public interest.

Upon consideration of the record and the contentions of the parties,
we find that we are in substantial agreement with the examiner. We will,
however, add an additional condition in order to ensure that the provision
of the agreement relating to Port Authority control over excessive increases
in charges at the airport, will constitute an effective limitation. Accord-
ingly, except as modified herein, and to the extent review is granted herein,
we adopt as our own the findings and conclusions of the examiner in his
initial decision which is attached hereto as an appendix.^{8/}

Basically the arguments for disapproval of the Teterboro agreement
rest on the proposition that the agreement results in real and sub-
stantial anti-competitive effects which far outweigh the speculative
benefit of the agreement arising from Pan American's proposed improvements
of Teterboro airport, and that the nature of the airport is such that it
should be operated by a public authority. In this connection, it is urged
that Pan American has made no specific commitment with respect to the
extent of the investments and improvements to be effectuated at Teterboro;
and that in any event such improvements would be, and appropriately should
be, effectuated by the Port Authority in the event of disapproval of the
agreement.

Upon our review of the record we reject these contentions. We find
that the contribution toward relieving the congestion at the New York

^{8/} As previously indicated, no review petitions were filed with respect
to the Republic Airport issues, and the Board has determined not to review
this aspect of the proceeding on its own initiative. Accordingly, we
express no opinion as to the findings and conclusions of the examiner on
such issues.

metropolitan airports which will be provided by Pan American's proposed investments in and improvements at Teterboro constitutes a real, direct, immediate and substantial benefit; that, subject to the conditions imposed herein and the provisions of the agreement providing for public and non-discriminatory operation and the continuing control over various aspects of the operation by the Port Authority and the FAA, Pan American's private operation of the airport as opposed to public operation by the Port Authority would not be adverse to the public interest; and that the alleged anti-competitive effects of the agreement are speculative, conjectural and unrealistic, and would in any event be effectively precluded by the provisions of the agreement providing for fair, equal and not unjustly discriminatory operation of the airport. Accordingly, we find that the benefits of the agreement far outweigh any anti-competitive effects that may in fact exist.

The critical problem of congestion at the three major New York Metropolitan Airports serving scheduled airline operations (Kennedy, LaGuardia and Newark) is detailed in the initial decision, and needs no further elaboration. Moreover, it is undisputed, and the record shows, that the development of Teterboro Airport will serve to attract general aviation away from these airports, and accordingly, will contribute toward the relief of such congestion. The urgency of the need for such relief was noted in the Board's order setting this matter down for a hearing, and is fully documented by the record.

^{9/} Order E-26190, December 28, 1967.

Pan American has submitted a detailed plan for the development of Teterboro Airport, prepared on its behalf by an architectural firm with extensive experience in airport construction work and airport feasibility studies (the so-called TAMS report). This plan proposes an investment of between 20 to 25 million dollars within the first five years of Pan American's operations. While Pan American states that it has not adopted this development plan in exact detail or with finality, and particularly that the proposed fees to be charged have not as yet been adopted or thoroughly studied with respect to economic feasibility, it nevertheless represents that the plan is descriptive of Pan American's general intention for development.

We find no basis in this record for conjecturing that Pan American might, contrary to its representations, fail to carry out its proposals for development substantially in the manner set forth in the TAMS Report. ^{10/}

Although further studies may be necessary for determination of the economic feasibility of the proposed fees, and the proposals for the construction of the fixed-base facilities and corporate hangars will necessarily depend upon the needs, desires and ability of such tenants to pay the rental

^{10/} While the examiner noted that the so-called "Blue Book" from Pan American's files contains an investment forecast which is considerably lower than that contained in the TAMS Report, we do not believe that this evidence provides any basis for assuming that Pan American will not in general follow the TAMS proposals. The "Blue Book" was prepared prior to preparation of the TAMS Report, and an internal Pan American confidential memorandum dated November 5, 1965, introduced by Butler, reflects the contemplation that the TAMS Report when completed, rather than the "Blue Book", will provide the appropriate estimate of Pan American's investment in and financial forecast for the operation of Teterboro Airport.

cost associated with investment of the nature proposed, we do not believe that these uncertainties adversely reflect upon the public interest of Pan American's proposal. The fact is that Pan American stands ready to make an investment in the neighborhood of \$20 million to the extent that the development of Teterboro Airport requires such an investment. We are not persuaded that the public interest would be any less served should the ultimate investment turn out to be only 15 rather than \$20 million dollars, by reason of the fact that the needs and desires of the users of the airport in accordance with an economically feasible plan, may not require or support an investment of the amount proposed. Moreover, as noted by the examiner, the increasing and substantial rental payments by Pan American to the Port Authority, as well as Pan American's own need for relief of the congestion at the major metropolitan airports, will provide a further incentive toward the making of such investment as is required, and as can be supported, by the needs of the user public.

We are also unpersuaded by the argument that the public interest requires public rather than private operation of the airport, and accordingly that the agreement should be disapproved and reliance placed upon the Port Authority for Teterboro's development. The Port Authority is the public agency which has the direct responsibility for operation of the airport. That agency has determined that the public interest would best be served by Pan American's private development of the airport, based upon its conviction that Pan American

is qualified to promote and fully develop Teterboro Airport into one of the country's outstanding public general aviation airports in the shortest interval of time. The Board should not interfere with the Port Authority's judgment as to the appropriate method for operation of the airport, absent a convincing showing that such method would be detrimental to the public interest. There is nothing in this record that would lead us to the conclusion that this is in fact the case. On the contrary, as the examiner noted, to require that the Port Authority itself undertake the improvement of the airport would inevitably lead to substantial delay.

In addition, the Department of Transportation has taken the position that expansion of private investment in airport development will benefit the entire aviation community, and the Department notes its policy that such private investment should be encouraged wherever possible. A similar attitude on the part of Congress is reflected by the Department of Transportation Act. ^{11/}

The agreement here in question, quite in contrast to indicating any derogation by the Port Authority of its responsibility for the protection of the public interest, contains numerous provisions to insure that the airport will be operated as a public airport, with services and charges being on a fair, equal, reasonable and not

^{11/} Section 2(b)(1) of the Department of Transportation Act (80 Stat. 931), states as one of the purposes of the establishment of the Department, "to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible. . ."

unjustly discriminatory basis.^{12/} It also provides for continued supervision by the Port Authority of various aspects of the airport operation.^{13/} In our view these provisions, with one exception, provide adequate assurance that private operation of the airport will not be contrary to the public interest. In addition, the Board's retention of jurisdiction provides a means whereby the Board can, if necessary, intervene to deal with unforeseen circumstances.

As noted, we find that the public interest requires an additional condition with respect to the level of fees which may be charged. On August 1, 1968, the Port Authority imposed a \$25 minimum landing fee at the New York jetports during peak congestion hours. As a result, the provision precluding Pan American from charging, without specific Port Authority approval, fees "in excess of the highest prevailing charges of a similar nature at other airports owned or operated by the Port Authority" may in effect be meaningless.^{14/} Moreover, it is

^{12/} Sections 2, 18, 26, and 35.

^{13/} Specifically, the airport must be operated in accordance with the Rules and Regulations promulgated by the Port Authority or additional Rules not inconsistent therewith (Sec. 7); charges in excess of prevailing charges of a similar nature at other airports owned or operated by the Port Authority must be approved by the Board of Commissioners of the Port Authority (Sec. 35); all agreements for the use or occupancy of the airport or any part thereof require the prior written consent of the Port Authority (Sec. 10); and only minor construction work may be undertaken without the prior written consent of the Port Authority (Sec. 12(a)(1) and (2)).

^{14/} If such peak hour charges were considered to be "of a similar nature", Pan American could, without Port Authority consent, increase the present minimum landing fees of \$1.50 to \$25.

apparent that with the development of Teterboro for general aviation traffic, the Port Authority may conclude that the public interest requires that other fees at the jetports should be revised in a manner wholly unrelated to the cost of the services rendered, but rather having the purpose of restricting general aviation traffic at these congested airports. Such charges would have no appropriate relevancy as the standards upon which the Port Authority would exercise continuing surveillance over the reasonableness of Pan American's charges at Teterboro. Accordingly we will require, as a condition to our approval, that the agreement be modified to provide in effect, that any proposed charges which are in excess of the highest similar charges prevailing as of September 19, 1967 at other airports owned and operated by the Port Authority, will be subject to the approval of the Port Authority. This condition is intended to preserve for Pan American an area of discretion in establishing charges, as contemplated by the agreement, while at the same time protecting the general aviation public from unreasonable charges. If this condition becomes unduly burdensome on Pan American, our retention of jurisdiction over the matter will allow us to consider remedying the situation.

We turn next to the question of the alleged anti-competitive effects of the agreement. It is urged that despite the provisions of the agreement which give the Port Authority substantial control over Pan American's operation of the airport, the power which Pan American will retain under the agreement over rates, leases, operating franchises, and rules and regulations, will in effect permit Pan American to control entry into general aviation activities at Teterboro Airport, to limit, regulate and control such activities, and to squeeze out existing

operations at the airport which displease Pan American. This, it is asserted, would constitute a restraint of competition which would be contrary to the public interest.

Obviously any operator of an airport will exercise a certain degree of control over the tenants and users of the airport facilities. It is to be noted, however, that the Teterboro agreement substantially circumscribes the power of control in this respect. While it may be that such power of control would provide an opportunity to engage in practices which could to a limited extent adversely affect a limited segment of general aviation, in the absence of substantial conflicts of interest between Pan American as an airport operator and Pan American's air carrier and other activities, it cannot be assumed that such power of control would result in any significant restraint on competition, or other practices contrary to the public interest.

There are persuasive reasons why the practices which the opponents envision should not be assumed. First, Pan American proposes a very substantial investment in Teterboro airport, and a return on that investment is necessarily dependent upon the Teterboro facilities being made attractive to both the users, and the fixed base operators and corporate tenants at the airport. If Pan American were to engage in the restrictive practices suggested, its prospects for a return on its investment would hardly be enhanced.

More fundamental, however, is the fact that any such restrictive practices would constitute a specific violation of the terms of the

agreement which require that the airport be operated on a fair, equal and not unjustly discriminatory basis, and the similar provisions of the Federal Aviation Act and Federal Airport Act, as well as the assurances in the Federal Aviation Administration grants, which are specifically made applicable to Pan American by the terms of the agreement. In our view there is ample provision in the agreement for effective enforcement of these non-discriminatory provisions, and in any event, should it ultimately develop that the powers of the Port Authority, the Federal Aviation Administration and the courts were inadequate to deal with practices adopted by Pan American which were inimical to the public interest, the Board's retention of jurisdiction to impose such further conditions as might be required, provides an adequate means of dealing with the situation.

15/ Sec. 2 requires operation in accordance with all applicable laws and regulations, while sec. 40(d)(e) requires compliance with the obligations of any Federal Grant Agreements. Thus also applicable pursuant to the agreement would be section 308 of the Federal Aviation Act which precludes any exclusive right for the use of the airport; section 11(1) of the Federal Airport Act which requires that the airport be available for public use on fair and reasonable terms and without unjust discrimination; and the assurances of the Jan. 2, 1968 FAA Grant Agreement which specifically prohibits the grant of any exclusive rights at the airport.

16/ Sections 15(a)(11) and (b) provide for Port Authority termination of the agreement on 30 days notice in the event that Pan American fails "to keep, perform and observe each and every promise, provision and agreement set forth in this Agreement," and that such right of termination is in addition to "all rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement . . ." Moreover, section 40(e) requires compliance with any FAA or other order issued in connection with the obligations under the federal grant of funds.

Moreover, we are unable to conclude that Pan American's operation of the airport would give rise to any substantial conflict of interest with respect to general aviation or fixed base operators. Nor can we conclude, that the conflicts alleged, even to the extent they might exist, would provide any substantial incentive toward practices in the operation of Teterboro Airport which would be in restraint of competition or otherwise adverse to the public interest.

The principal areas of conflict of interest alleged are: (1) a basic conflict between the airlines and general aviation arising by reason of competition for the use of airport space and air space; (2) a conflict arising from Pan American's interests in the sale and servicing of the Falcon executive turbojet aircraft for which Pan American is the U.S. distributor; and (3) a conflict arising by reason of Teterboro traffic connecting to Pan American's scheduled services at other metropolitan airports.^{17/}

Even if there were a conflict between airlines and general aviation resulting from congestion at the major New York metropolitan airports, there nevertheless would be no incentive for Pan American to operate Teterboro in a manner which would be

^{17/} We find no merit to Butler's argument that a restraint in competition in the aviation service business would result from alleged loopholes in the condition precluding Pan American from engaging in such business, the possibility of removal of the condition, or the ability of Pan American to select fixed base operators who may conduct business at the airport. We consider that the condition, the anti-discrimination provisions of the agreement, as well as the requirement for Port Authority approval of leases, provide ample assurance against Pan American restraining competition in this area, even assuming that control over the limited number of fixed base operators doing business at Teterboro could result in any substantial competitive restraint. See *Butler Aviation Company v. Civil Aeronautics Board*, 389 F.2d 517, 520-21 (CA2, 1968).

detrimental to general aviation. With respect to the operation of the Teterboro Airport, the interests of Pan American and general aviation, as well as the public interest, are parallel; that is, the fullest development of Teterboro Airport for general aviation in a manner which will provide relief of congestion at the major New York metropolitan jetports.

It is further contended that Pan American's proposal to establish hangar and servicing facilities for its demonstrator Falcon aircraft ^{18/} at Teterboro Airport will create a conflict of interest and restraint of competition with respect to the sale of other competitive high performance executive jet aircraft. The argument is made that Pan American will be able to squeeze out fixed base operators engaged in the selling of competitive executive aircraft, and could allocate for itself the choice sites for executive aircraft demonstration. Pan American represents that its major sales activity is conducted not at its demonstrator base, but rather from its main office at the Pan Am Building in New York City, and that demonstrations for the sales of such aircraft are conducted at airports

^{18/} In addition to hangar facilities, Pan American states that it may relocate its spare parts inventory, currently maintained at its hangar at the Kennedy Airport, and, in the event that it is unable to make satisfactory arrangements with others for major overhaul of the Falcon aircraft, it would, in accordance with the obligations of its contract with the French manufacturer of such aircraft, perhaps be required to establish facilities for the performance of such service itself, which may be located at Teterboro. It does not contemplate performing routine maintenance on the Falcon aircraft itself, except with respect to demonstrator or other aircraft owned by it. Its demonstrator aircraft are presently based at and maintained by Pacific Airmotive Corp. at Westchester County Airport.

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throughout the country, wherever convenient for its customers. Thus, there would apparently be little incentive for Pan American to attempt to maintain itself as the exclusive seller of such competitive aircraft at Teterboro, and any discriminatory practices conducted by it in an attempt to do so would constitute a violation of the agreement.^{19/} Even to the extent that Pan American were to become the exclusive distributor of high performance executive jet aircraft at Teterboro, there is no showing on this record that this would result in any substantial restraint of competition in the sale of such aircraft, and indeed considering the very substantial cost of such aircraft, and the many differences between the various competitive aircraft, it would hardly be realistic to assume that the location of the hangar base for demonstrator aircraft could or would have any substantial impact on the competitive sales of such aircraft.^{20/}

Finally, it is alleged that there would be a conflict of interest and restraint of competition by reason of the ability of Pan American to utilize its control of Teterboro in a manner which would favor general aviation passengers connecting with Pan American's scheduled airline traffic at the Kennedy Airport. In this connection, it is urged that account must be taken of Pan American's control of New York Airways providing helicopter service between Teterboro, Kennedy and the Pan Am Building Heliport in Manhattan. However, section 26(e) of the

^{19/} The President of Atlantic Aviation, a fixed-base operator which is presently engaged in the sale, inter alia, of competitive jet aircraft at Teterboro, expressed no concern with respect to Pan American's operation of Teterboro by reason of the fact that it was an airline and a distributor of high performance executive jet aircraft.

^{20/} See Butler Aviation Company v. Civil Aeronautics Board, supra, 389 F.2d at 519-20.

agreement specifically provides that any helicopter operations and related services at Teterboro, "will at all times be conducted and provided on a fair, equal and not unjustly discriminatory basis with respect to all persons wishing to use any of the same and to all airlines wishing to participate in such arrangements, activities and accommodations if any such air line operates within the Port of New York District."

A similar provision is made with respect to the sale of tickets for scheduled airline services in conjunction with helicopter flights.

Moreover, in view of the very limited proportion of Teterboro traffic which would presumably connect with Pan American's overseas and foreign scheduled airline services, it would appear that an attempt to provide a service limited to accommodating this traffic would not be economically feasible; and that Pan American would have no incentive to violate the anti-discrimination provisions of the agreement by doing so.

A further argument is made that Pan American's operation of the Teterboro Airport would be contrary to the public interest because Pan American plans to limit light plane activity at the airport, and a public airport should be open to all categories of general aviation aircraft. The TAMS report forecasts and proposes the phasing out of local and student "touch and go" operations by 1971, but nevertheless forecasts an overall increase, though declining percentage, of itinerant light plane traffic. It is Pan American's position that while the anticipated growth of itinerant traffic may require a phasing out of local operations, particularly "touch and go" student training flights, there can be no question that to the extent that a conflict between student and itinerant

operations should arise, it is desirable to assure capacity for the itinerant operations. It notes that there is a severe shortage of facilities for itinerant flights, while the student practice operations can readily be accommodated at the many other smaller and less well equipped airports in the area. In our view Pan American's approach is the one that is consistent with the public interest.

Extensive argument is made that the agreement cannot be approved because it falls within the prohibition of the first proviso to section 408(b) with respect to the creation of a monopoly which restrains competition or jeopardizes another air carrier not a party to the arrangement. In view of our conclusion that there is no substantial restraint of competition resulting from the agreement, and the absence of any significant showing of jeopardy to any other carrier,^{21/} the question as to whether there is a technical creation of a monopoly under the agreement becomes somewhat academic.^{22/} In any event, we agree with the examiner that approval of the agreement will not result in the creation of a monopoly within the meaning of the §408(b) proviso.

^{21/} We agree with the examiner that in view of the insignificant relative volume of connecting traffic between Teterboro and the scheduled airlines at the metropolitan jetports, and the specific provisions of the agreement which preclude discrimination with respect to such traffic, that Pan American's alleged control over such traffic could not provide any significant jeopardy to any other air carrier.

^{22/} As noted in *Butler Aviation Company v. Civil Aeronautics Board*, *supra*, 389 F.2d at 519, the creation of a monopoly is not enough to trigger the proviso unless it would restrain competition or jeopardize a non-party air carrier.

Various allegations have been made that the Teterboro agreement is illegal, and accordingly for this reason should not be approved. Thus it is alleged that Pan American's control represents an exclusive right for use of the airport in violation of section 308 of the Federal Aviation Act and section 11 of the Federal Airport Act,^{23/} and that the agreement constitutes an unlawful delegation of authority by the Port Authority. The fact that the Federal Aviation Administration has made a grant of Federal funds in specific contemplation of Pan American's operation of the airport pursuant to the agreement with the Port Authority, and that the Port Authority has entered into the agreement, in effect constitutes a determination by these agencies, who are responsible for administration of the provisions allegedly violated, that there has been no such violation. We agree with the examiner that it would not be appropriate for the Board in this proceeding to collaterally litigate the applicability of these provisions. If a question of the legality of the actions of the Port Authority or the Federal Aviation Administration exists, it should be litigated elsewhere.

^{23/} With respect to Butler's contention that the Board must pass upon whether the agreement violates the policies, as opposed to the letter of these statutes, we find nothing in the agreement inconsistent with such policies. On the contrary, the agreement in terms requires that Pan American's operation of the airport be on a non-discriminatory basis, as well as requiring compliance with all applicable laws. Moreover, as noted supra note 15 the provisions of section 308 of the Federal Aviation Act and section 11 of the Federal Airport Act are specifically made applicable to Pan American under the terms of the agreement.

We come finally to the arguments that additional conditions should be imposed in connection with approval of the agreement.^{24/} AOPA takes exception to the examiner's rejection of its proposed condition that the agreement be limited to a lease of land necessary for Pan American to accomplish the proposed improvements. The purpose of this condition is stated by AOPA to be to leave the power to prescribe rules and fees in the Port Authority.^{25/} NATA, as an alternative to disapproval, has proposed several conditions which, inter alia, would leave the regulation of rates, rules, and grant of leases and franchises solely to the Port Authority.^{26/} The Bureau takes exception to the examiner's rejection of

^{24/} We have examined the allegations of procedural errors made on the part of Butler and AOPA, and find that we are unpersuaded that error was committed, and that in any event the exclusion of evidence was not prejudicial, and would not affect our conclusions herein. Thus the examiner (1) properly sustained objections to questions relating to standards set up by the Port Authority, following the witness' prior statement that he knew of no such standards; (2) reasonably exercised his discretion in refusing to allow the introduction of evidence relating to fees charged at other airports, and certain other questions relating to the economic feasibility of fees proposed, where such evidence had not been exchanged in written form prior to the hearing, as required by the ground rules; and (3) properly, in accordance with the ground rules, restricted the questioning of the President of Atlantic Aviation to rebuttal of a Pan American exhibit consisting of a letter written by him.

^{25/} Apparently AOPA contemplates that the lease under this condition would not include the runways and taxiways which are presently being improved by the Port Authority, but which improvements will ultimately be financed by Pan American.

^{26/} In effect the conditions would leave the question of rates, rules, and grant of leases or franchises solely to the Port Authority (1, 2, & 3); prohibit Pan American from using its control to influence air passengers to use its scheduled airline services as distinguished from those of other carriers, or from inhibiting other carriers or persons from establishing inter-airport transportation, or otherwise discriminating against any class of aircraft, aircraft operations or aircraft operators at Teterboro Airport (4, 5 & 6); and would require that any proposed changes in the existing agreements be submitted to the Board for prior approval before consummation (7).

its proposal that the Board's approval be limited to a period of ten years, noting the novelty of the question presented and the inability to anticipate the long-term effect of the agreement.

With respect to the Bureau and AOPA conditions, Pan American takes the position that these would totally transform the nature of the agreement, are unacceptable, and would be tantamount to disapproval. We believe that Pan American's objections are justified, and we are unable to conclude that the public interest requires the adoption of the conditions proposed. As noted by Pan American, the Bureau's ten year limitation of approval would not provide a sufficient period for amortization of the substantial investment proposed, and the Board's retention of jurisdiction provides an adequate basis for Board action if practices inimical to the public interest should develop. AOPA's proposal would in effect result in the imposition of an entirely different arrangement from that agreed upon between the Port Authority and Pan American, and is unnecessary. Similarly, subject to the modification we have found to be required, we find no necessity for the conditions proposed by NATA which would leave control of rates, rules, and leases solely to the Port Authority, and we are not persuaded that the NATA conditions with respect to connecting airline traffic, and precluding discrimination, are necessary or would add significantly to the similar provisions already contained in the agreement. We are also unpersuaded as to the necessity for NATA's proposed condition which would require the filing for prior Board approval of any changes to the agreement. Any major changes which would in effect change the nature of the arrangements or of Pan American's operational control

so as to be significantly different from the arrangement approved by the Board, would in any event require additional approval under section 408. While it may be anticipated that other subsidiary arrangements, and minor modifications, may be made within the framework of the agreement approved, which would not require additional section 408 approval, we find no necessity for subjecting the Board to the burden of approval of each such minor modification. Our retention of jurisdiction will provide sufficient opportunity for the Board to deal with any non-filed modification which might require Board action.

In view of the foregoing considerations and all the facts of record, we find:

1. That the petitions for discretionary review herein should be granted to the extent that the Board has, without further proceedings, reviewed the initial decision insofar as it relates to the agreement between Pan American and the Port Authority for the operation of Teterboro Airport, and should otherwise be denied;

2. That the agreement between Pan American and the Port Authority, subject to a condition against Pan American's engaging regularly in aviation service business except for its sale, ownership, and operation of aircraft, and a modification with respect to Port Authority approval of charges, will not be inconsistent with the public interest, will not result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the arrangement, and should be approved;

3. That the Board should retain jurisdiction to impose such further conditions as may be found reasonable and should attach the conditions set forth in the attached order;

4. That other conditions proposed by the parties are not required by the public interest and should not be imposed; and

5. That the motion of Butler Aviation Company to reopen the record for the receipt of additional evidence, should be granted.

An appropriate order will be entered.

CROOKER, Chairman, MURPHY, Vice Chairman, MINETTI, GILLILLAND and ADAMS, Members, concurred in the above opinion.

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APPENDIX

DOCKET 19045, 19046

THE EXAMINER'S INITIAL DECISION REFERRED TO HEREIN IS NOT ATTACHED TO THIS COPY BECAUSE OF THE WIDE CIRCULATION GIVEN AT THE TIME OF ITS RELEASE. THE INITIAL DECISION IS ATTACHED TO THE ORIGINAL OF THE BOARD'S OPINION AND TO THE OFFICIAL COPIES IN THE BOARD'S FILES AND MAY BE EXAMINED THERE. IT WILL ALSO BE PRINTED AS PART OF THE OFFICIAL "CIVIL AERONAUTICS BOARD REPORTS."

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[Caption Omitted in Printing]

Order 68-9-120

O R D E R

A full public hearing having been held in the above-entitled proceeding, Associate Chief Examiner Ralph L. Wiser having issued his initial decision herein on May 10, 1968; petitions for review of portions of the initial decision and answers thereto having been filed; the Board having, without further proceedings, granted review in part of the initial decision; and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions and decision, with respect to that portion of the initial decision reviewed:

IT IS ORDERED:

1. That the petitions for discretionary review herein are granted to the extent that the Board has reviewed, without further proceedings, that portion of the initial decision relating to approval of the agreement between Pan American World Airways, Inc. and the Port of New York Authority for operation of Teterboro Airport (Docket 19046), and are otherwise denied.
2. That, subject to the conditions specified below, the application of Pan American World Airways, Inc., for approval of its agreement with the Port of New York Authority for operation of Teterboro Airport (Docket 19046), be and it hereby is approved.
3. That the approval is subject to the following conditions:

- (a) Except in connection with aircraft which it may sell, own or operate, or on a casual, infrequent or emergency basis, Pan American will not engage in the aviation service business at Teterboro Airport; provided however, that Pan American may provide such services for a period up to 90 days if necessitated by failure of persons normally engaged in such activities to provide such services. For the purposes of this

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order, aviation service business involves principally the following activities: (1) the sale to users of aircraft fuel and lubricants; (2) the delivery of fuel into aircraft; (3) aircraft maintenance and repair; (4) the sale and installation of avionics; (5) the provision of hangar storage and outdoor tie-down locations for aircraft (Pan American reserves the right also to provide hangar facilities and public tie-down services); and (6) the performance of turn-around services.

- (b) The provision of the agreement relating to Port Authority consent for charges imposed by Pan American at Teterboro Airport shall be modified to provide in effect that any charges proposed by Pan American in excess of the highest charges prevailing as of September 19, 1967 of a similar nature at other airports owned or operated by the Port Authority will be subject to the approval of the Port Authority.
- (c) Approval shall not, in any manner, be relied upon by Pan American as a basis for augmenting its investment for rate-making or other regulatory purposes; nor shall such approval be deemed a determination, for ratemaking or other regulatory purposes, of the reasonableness of any costs or charges of the transaction.

4. That jurisdiction over the proceeding is hereby retained for the purpose of imposing at any time, with or without hearing, such further conditions as may be found just and reasonable.

5. That the portion of the initial decision denying the application of Pan American World Airways, Inc., for approval of its agreement with Fairchild-Hiller Corporation and Farmingdale Company, for lease and operation of Republic Aviation Airport (Docket 19045), which has not been reviewed by the Board, shall become effective on the date of this order.

6. That the motion of Butler Aviation Company to reopen the record for the receipt of additional evidence, be and it hereby is granted.

By the Civil Aeronautics Board:

(SEAL)

HAROLD R. SANDERSON
Secretary

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[Caption Omitted in Printing]

PETITION OF BUTLER AVIATION COMPANY
FOR RECONSIDERATION OF ORDER 68-9-120

Butler Aviation Company hereby petitions the Board to reconsider Order 68-9-120, insofar as that order reviews the Initial Decision and makes final disposition of the above-captioned proceeding without allowing submission of full briefs and oral argument on the complex and important issues raised in the proceeding. Butler submits that this is the type of proceeding in which the sound exercise of discretion requires the Board to permit the parties the fullest opportunity to present the issues and arguments. The Board should therefore reconsider and set aside Order 68-9-120, allow submission of briefs, and set the case for oral argument.

The Board's discretionary review procedures are designed to sort out cases that raise important or complex issues from more routine ones, so that the former may be given fuller consideration by the Board. This is such a case. It presents issues of national importance involving the relationship of air carriers to general aviation and of both segments to vitally important airport facilities. It involves complex questions of monopoly and potential restraints on competition -- the sort of issues that typically require months or years of intensive work by the courts when they are raised in other industries.

This case involves substantial and important questions of law, policy, and discretion. The issues presented are the type that the Board

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should not resolve without affording the fullest measure of procedural opportunity to the parties to present their views. Thus, the principles on which the Board has based its decision could lead to air carrier control of general aviation facilities in every major city in the United States. It could ultimately alter the basic structure of the American general aviation community. This should not be ventured with less than the fullest measure of opportunity for presentation of views.

Moreover, the need for full dress review is heightened in this situation by the fact that the issues presented are not the sort that the Board is accustomed to deal with and are not in an area where the Board has developed a substantial degree of expertise through repeated exposure. Rather, they require a full understanding of the needs of the general aviation community and the manner in which supporting activities for that community are conducted. Lacking the intimate familiarity with the general aviation industry, the Board is subject to a greater requirement than usual to undertake plenary consideration of the issues raised in this proceeding.

In fact, Butler believes that the Board's order in this matter reflects an incomplete understanding of the contentions of those parties that opposed approval of this agreement. The findings in the order are highly conclusory in nature. Aside from the absence of supporting reasoning which renders them legally inadequate, those findings demonstrate a lack of understanding of the vital considerations that, in the view of the intervenors, will lead to serious competitive restraints and other problems if New York's major general aviation facility is turned over to Pan American.

Only through full briefs and oral argument can the parties have the requisite opportunity to present their position in a truly meaningful fashion. Certainly the right to file a petition for discretionary review does not satisfy this need in a case of this sort. Petitions for discretionary review are designed to set forth the reasons why a case is of such importance that the Board should not adopt the initial decision of

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its examiner, but should hear the matter itself. It is limited to twenty pages, whereas fifty pages are permitted in a brief to the Board. It is simply not the same thing to permit a party to argue in twenty pages that a case is sufficiently important that it warrants Board review as it is to permit the party full written and oral opportunity to argue the merits of the substantive issues presented. The Board has decided the case on the merits without giving the parties the opportunity to present full argument on the merits, either orally or in writing.

Moreover, in a case of this complexity and national significance, where the Board does not have a high degree of familiarity with the issues and problems that are raised, sound discretion requires not only that the parties be permitted to submit full written arguments, but that they be allowed an opportunity for face-to-face presentation to the Board, in order to insure the fullest degree of meaningful communication of the parties' positions.

Finally, Butler believes that the Board's utilization of abbreviated review procedures in this case is contrary to its own announced criteria at the time it adopted such procedures in 1963. In November 1962, the Board issued a notice of proposed rule making (PDR-21, Docket 14141) under which its rules were to be amended to authorize the Board to take

review of an Initial Decision without exchange of briefs or oral argument. Several comments were submitted questioning the wisdom of such abbreviated review procedures. In rejecting those comments and adopting the rule as proposed, the Board noted:

"The basic purpose of the rule change is to enable the Board to dispense with briefs and oral argument where it is apparent that such additional procedures would serve no useful purpose and would merely burden the parties and the Board. The Board would not employ the abbreviated procedure in such manner as to deprive a party of the right to be heard on any pertinent issue which could reasonably be considered as subject to controversion...."
(Emphasis supplied) (PR-78, March 20, 1963)

It is inconceivable that the Board could consider that the pertinent issues in this case could not "reasonably be considered as subject to

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controversion." On the contrary, by the Board's own criteria, this is not an appropriate case for use of the abbreviated procedures, and the Board should afford the parties to this proceeding the opportunity to submit full written briefs and to present oral argument on the complex and important issues involved.

In considering this Petition, Butler requests that the Board take official notice of the FAA's proposed rule making on High Density Traffic Airports (Notice 68-20; 32 Fed. Reg. 12580, September 5, 1968), under which access to certain major airports would be restricted. This proposal and the controversy between air carriers and general aviation that has ensued reemphasize the vital importance of keeping major general aviation facilities out of the hands of mammoth air carriers such as Pan American and in neutral hands. If official notice can not be taken, it is requested that the record be reopened for the purpose of receiving this material.

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PETITION OF NATIONAL AVIATION TRADES ASSOCIATION
FOR RECONSIDERATION OF ORDER 68-9-120

The National Aviation Trades Association (NATA) hereby respectfully requests that the Board reconsider Order 68-9-120, withdraw the order, and undertake further consideration of this proceeding, with presentation of full briefs and oral argument to the Board.

This is a case of great importance to the general aviation industry as a whole. It raises issues of national significance and of unusual complexity, issues that should be determined by the Board only after full presentation of written and oral arguments by interested parties. The need for full briefs and oral argument is, in fact, magnified in this case by the unusual nature of the issues presented, which concern areas and problems that are in many respects novel in the Board's experience.

NATA believes that the Board has failed to understand fully the evidence presented in this proceeding and the arguments advanced by NATA and the other intervenors against approval of the agreement. We believe that the result might well have been different if we and the other intervenors had been afforded an opportunity to present our arguments in a unified and relatively complete fashion and to explain them to the Board orally as well as in writing. In a case of this complexity and significance, the mere filing of petitions for discretionary review does not constitute sufficient opportunity to advance a cogent presentation on complex and controversial issues.

Finally, Section 1004(a) of the Federal Aviation Act requires that "in all cases heard by an examiner or a single member the Board shall hear or

receive argument on request of either party." Even assuming that where the

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issues are clear, simple, and fall directly within the Board's area of expertise, a receipt of written petitions for discretionary review may suffice to satisfy the statutory requirement, we do not believe that such limited opportunity to present a position is sufficient in a complex and novel case such as this one.

In summary, under the circumstances of this case basic fairness requires that the parties be given an opportunity to be heard by means of full written and oral argument, and NATA requests that the Board do so.

[Subscription Omitted in Printing]

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[Caption Omitted in Printing]

ORDER ON RECONSIDERATION

By Order 68-9-120, the Board, inter alia, approved, subject to conditions, an agreement between Pan American World Airways and the Port of New York Authority for operation of Teterboro Airport. Petitions for reconsideration of this order have been filed by Butler Aviation Company, the National Aviation Trades Association (NATA), and Pan American and the Port Authority, jointly. 1/ Upon consideration, we find that the petitions of Butler 2/ and NATA have not established error in the Board's decision and that the relief requested is not required as a matter of law, policy or administrative discretion. Their petitions will therefore be denied. We shall, however, grant the petition of Pan American and the Port Authority. We turn first to consideration of the Butler and NATA petitions.

1/ Pan American and the Port Authority have filed separate answers in opposition to the petitions of Butler and NATA, and Butler has filed an answer in opposition to the Pan American-Port Authority petition. In addition, the Bureau of Operating Rights has filed an answer supporting the Pan American-Port Authority petition.

2/ Butler requests that the Board, in considering its petition, take official notice of the FAA's proposed rule making on high density traffic airports (Notice 68-20; 32 F.R. 12580, September 5, 1968), under which access to certain major airports would be restricted. The Port Authority states it has no objection. Butler's request is granted.



Order 68-9-120 reviewed the examiner's initial decision with respect to approval of the Pan American-Port Authority agreement for operation of the Teterboro Airport, pursuant to petitions for discretionary review filed by a number of parties. 3/ Such review was "without further proceedings" (i.e. briefs to the Board and oral argument), the Board stating: "In view of the extensive nature of the proceedings before the examiner, and the nature of the issues raised in the

3/ Butler, NATA, Aircraft Owners and Pilots Association, and the Bureau of Operating Rights.

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petitions for review, the Board finds that further proceedings are not warranted." This finding was made pursuant to Rule 28(d) of the Rules of Practice, providing, in part: "The Board will issue a final order upon such review without further proceedings on any or all issues where it finds that matters raised do not warrant further proceedings."

In their petitions for reconsideration neither Butler nor NATA addresses any argument to the merits of the Board's decision. They ask reconsideration of Order 68-9-120 only insofar as that order reviews the initial decision without providing for the submission of briefs and oral argument and assert that the Board should set aside the order and allow the presentation of briefs and oral argument. We find, however, that petitioners have shown neither procedural nor substantive error in the Board's failure to provide for submission of briefs or oral argument in its decision on review, and their requests will be denied.

Butler argues that this case involves substantial and important questions of law, policy and discretion; that "the Board's discretionary review procedures are designed to sort out cases that raise important or complex issues from more routine ones, so that the former may be given further consideration by the Board", and that "this is such a case"; and that the Board's action here was inconsistent with our established criteria for employing the abbreviated procedures.

Under the Board's discretionary review procedures and rules, the fact that a case involves a substantial and important question of law, policy or discretion, is one of the grounds upon which a petition for review may be filed 4/ and is a criterion upon which the Board determines whether it should or should not exercise its discretionary right of review. 5/ Upon consideration of the matters presented in the petitions for review, which included the point that the case involves substantial and important questions of law, policy or discretion, the Board did review the initial

4/ Rule 28(a)(2)(iii).

5/ Rule 28(a)(1) provides in part: "Review by the Board pursuant to this section is not a matter of right but of the sound discretion of the Board." Thus, the Board may decline review even where an important question of law or policy is presented (e.g., where the Board is fully satisfied with the examiner's decision and there is no real need for further argumentation.)

decision on the Teterboro issues. But neither the Board's rules nor its practice under those rules requires that its review of an initial decision be attended by the filing of briefs and the hearing of oral argument, notwithstanding the fact that the case involves a substantial and important question of law, policy or discretion. 6/

6/ For example, in cases involving the important question of control of Los Angeles Airways and New York Airways, respectively, by other air carriers, the Board reviewed initial decisions without further proceedings. Orders E-23268, E-23714 and 68-7-169.

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Nor was our use of the abbreviated procedures inconsistent with the criteria announced by the Board in promulgating those rules. There the Board indicated that it would not employ these procedures in such manner as "to deprive a party of the right to be heard" on pertinent issues which could reasonably be considered as subject to controversion." 7/ There was no such deprivation here.

To begin with, in deciding this case the Board had before it in the record and considered exhaustive argument on the issues presented to the examiner. Butler alone filed a 72-page brief to the examiner and its petition for review constituted 20 pages, the limit permitted. 8/ NATA filed a brief of only nine pages to the examiner. However, its petition for review was slightly longer than its brief, covering six separate points on the merits. Except for alleged procedural errors raised by Butler in its petition for review, the issues raised in the petitions for review were substantially the same issues considered by the examiner in his opinion.

Furthermore, when the Board established the abbreviated procedures, it made clear that a party feeling aggrieved by a decision under those procedures could always file a petition for reconsideration. Thus, assuming arguendo that the Board's use of shortened procedures deprived Butler and NATA of the right to be heard on pertinent issues, they have had full and fair opportunity to present written argument on the issues in their petitions for reconsideration. However, their petitions for reconsideration do not show that the abbreviated procedures have, in fact, deprived them of a right to be heard, and, indeed, the petitions are completely lacking in enlightenment as to the matters on which they wish to be heard or the findings

7/ PR-78, March 20, 1963.

8/ In its petition Butler states: "It is simply not the same thing to permit a party to argue in twenty pages that a case is sufficiently important that it warrants Board review as it is to permit the party full written and oral opportunity to argue the merits of the substantive issues presented." This argument ignores the fact that the Board took into consideration Butler's brief to the examiner in determining that further procedures were not warranted as well as its petition for review. Actually, Butler devoted only one sentence of its petition to argument that the initial decision "involves substantial and important questions of law and policy." The remainder of the petition discussed the merits under nine separate points.

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which they believe to be erroneous. 9/ Their failure to avail themselves of the opportunity to argue the merits of their case is of their own doing, and they have no right to, nor have they need for, oral argument.

Finally, dispensing with further proceedings was and continues to be warranted by the exigencies of time. In setting down the proceeding for hearing the Board took note of the difficult problems of congestion that currently exist at the major airline airports serving the New York Metropolitan Area and the fact that the two agreements involved herein contemplate the expansion of facilities at outlying airports and thus have a potential for relieving congestion. It found that there was therefore a substantial public interest in resolving the issues presented as speedily as possible and stated:10/

"To this end we are directing that this proceeding be set down for hearing promptly and that it be expedited by the hearing examiner at all stages of the proceeding, consistent with due process to all interested persons."

Moreover, the need for expedition of the proceeding was reinforced by the record of the hearing which followed. Although the agreement will not take effect until the completion of certain runway construction by the Port Authority contemplated at the earliest as of December 15, 1968, testimony at the hearing showed that by arrangement with the Port Authority, Pan American will commence site preparation and construction work for the planned improvements as soon as the Board approves the contract, and that each month of delay of approval will result in a corresponding delay in completion of the improvements. (TR. 273-74)11/

9/ We do note, however, that in its answer to the Pan American-Port Authority petition, Butler gives the following as "simply one example of the many matters which Butler and the other intervenors should be permitted to present to the Board in full briefs and oral argument." The example: "It is contrary to the public interest for an airport developed in part with taxpayers' funds--part of which taxes are paid by general aviation companies--to be turned over to a huge airline to be operated for its private profit, particularly when the vital long-range interests of that airline are directly opposed to the users of that airport." However, the same argument was made and elaborated on in its brief to the examiner (pp. 58-59), noted by the examiner (I.D. 17), discussed by the examiner (I.D. 32) and reiterated by Butler in its petition for review (p. 9), and there is nothing in the petition for reconsideration which suggests that Butler has anything further to offer by way of argument on this issue.

10/ Order E-26190, December 28, 1967.

11/ These facts were brought to the Board's attention by Pan American's answer to petitions for review, and the Port Authority in its answer specifically urged that, if the Board reviewed the initial decision, it do so without further proceedings.

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We conclude, therefore, that petitioners have shown no basis for grant of the relief requested, and it is denied.

The petition for reconsideration of Pan American and the Port Authority is directed to a condition to approval of the Teterboro agreement which the Board added sua sponte. The agreement prohibits Pan American from charging, without specific Port Authority approval, fees "in excess of the highest prevailing charges of a similar nature at other airports owned by the Port Authority." Since the Port Authority had recently imposed a \$25 minimum landing fee at the New York jetports during peak congestion hours, the Board stated that the provision on fees may in effect be meaningless.^{12/} Moreover, the Board stated that other fees at the jetports could be revised in a manner wholly unrelated to the cost of service, but rather having the purpose of restricting general aviation traffic at these congested airports, and such charges would have no appropriate relevancy as the standards upon which the Port Authority would exercise continuing surveillance over the reasonableness of Pan American's charges at Teterboro. Accordingly the Board required, as a condition to approval, that the agreement be modified to provide, in effect, that any proposed charges which are in excess of the highest similar charges prevailing as of September 19, 1967, at other airports owned and operated by the Port Authority, will be subject to the approval of the Port Authority.

In their petition Pan American and the Port Authority request that the condition be modified to provide an adjustment of the base in proportion to changes in an accepted cost of living index. For this purpose they suggest insertion of the following at the end of the Board's condition: "provided, however, that if the Department of Commerce index 'Implicit Price Deflator for Gross National Product' shows any change against the base year of 1967, the September 1967 charges will be deemed to be proportionately adjusted, provided further, nevertheless, that there shall be no charges in excess of the then current highest prevailing charges of a similar nature at other airports owned or operated by the Port Authority except with Port Authority approval." The requested modification is supported by the Bureau of Operating Rights, but opposed by Butler.

We have decided to accept the proposed modification of the condition. As modified the condition retains the September 19, 1967 base, but allows adjustment proportional to changes in the index. In our view the modification is reasonable, since it will permit Pan American flexibility to meet rising cost trends within an area of discretion, as

^{12/} It noted that if such peak hour charges were considered to be "of a similar nature", Pan American could, without Port Authority consent, increase the present minimum landing fees of \$1.50 to \$25.00.

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contemplated by the agreement. Moreover, the modification will not deprive the general aviation public of protection against unreasonable charges.

While the effect of the modification would be to raise the level to which Pan American may increase charges without Port Authority approval, should the index warrant adjustment, this does not mean that Pan American has uncontrolled discretion to increase charges up to that level. In the first place, Teterboro is in competition with other general aviation airports and Pan American, for economic reasons, would need to keep its rates competitive. Secondly, Article 35 of the agreement requires that all charges with respect to the use of the airport "shall be at fair, reasonable and not unjustly discriminatory rates." We interpret this provision to mean that the charges must be reasonable, irrespective of whether they must be submitted to the Port Authority for approval. And the Port Authority may, inter alia, terminate the agreement should Pan American fail to keep its promise under Article 35.^{13/} In any event, the Board retains jurisdiction to revise the condition should operations under the agreement indicate a need therefor. For the foregoing reasons, we shall grant the joint petition of Pan American and the Port Authority.

ACCORDINGLY, IT IS ORDERED:

1. That the petitions for reconsideration filed by Butler Aviation Company and the National Aviation Trades Association be and they hereby are, denied.
2. That the joint petition for reconsideration filed by Pan American World Airways and the Port of New York Authority be and it hereby is granted.
3. That ordering paragraph 3(b) of Order 68-9-120 be and it hereby is modified to read as follows:

"The provision of the agreement relating to Port Authority consent for charges imposed by Pan American at Teterboro Airport shall be modified to provide in effect that any charges proposed by Pan American in excess of the highest charges prevailing as of September 19, 1967, of a similar nature at other airports owned or operated by the Port Authority will be subject to the approval of the Port Authority: Provided, however, that if the Department of Commerce index 'Implicit Price Deflator for Gross National Product' shows any change against the base year of 1967, the September 19, 1967 charges will be deemed to be proportionately adjusted, provided further that there shall be no charges in excess of the

^{13/} See Order 68-9-120, p. 12, fn. 16.

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then current highest prevailing charges of a similar nature at other airports owned or operated by the Port Authority except with Port Authority approval."

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,602

**NATIONAL AVIATION TRADES ASSOCIATION and
BUTLER AVIATION COMPANY,**

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

**PAN AMERICAN WORLD AIRWAYS, INC. and
PORT OF NEW YORK AUTHORITY,**

Intervenors.

**ON PETITION TO REVIEW OPINIONS AND ORDERS
OF THE CIVIL AERONAUTICS BOARD**

**BRIEF FOR INTERVENOR
PAN AMERICAN WORLD AIRWAYS, INC.**

U.S. COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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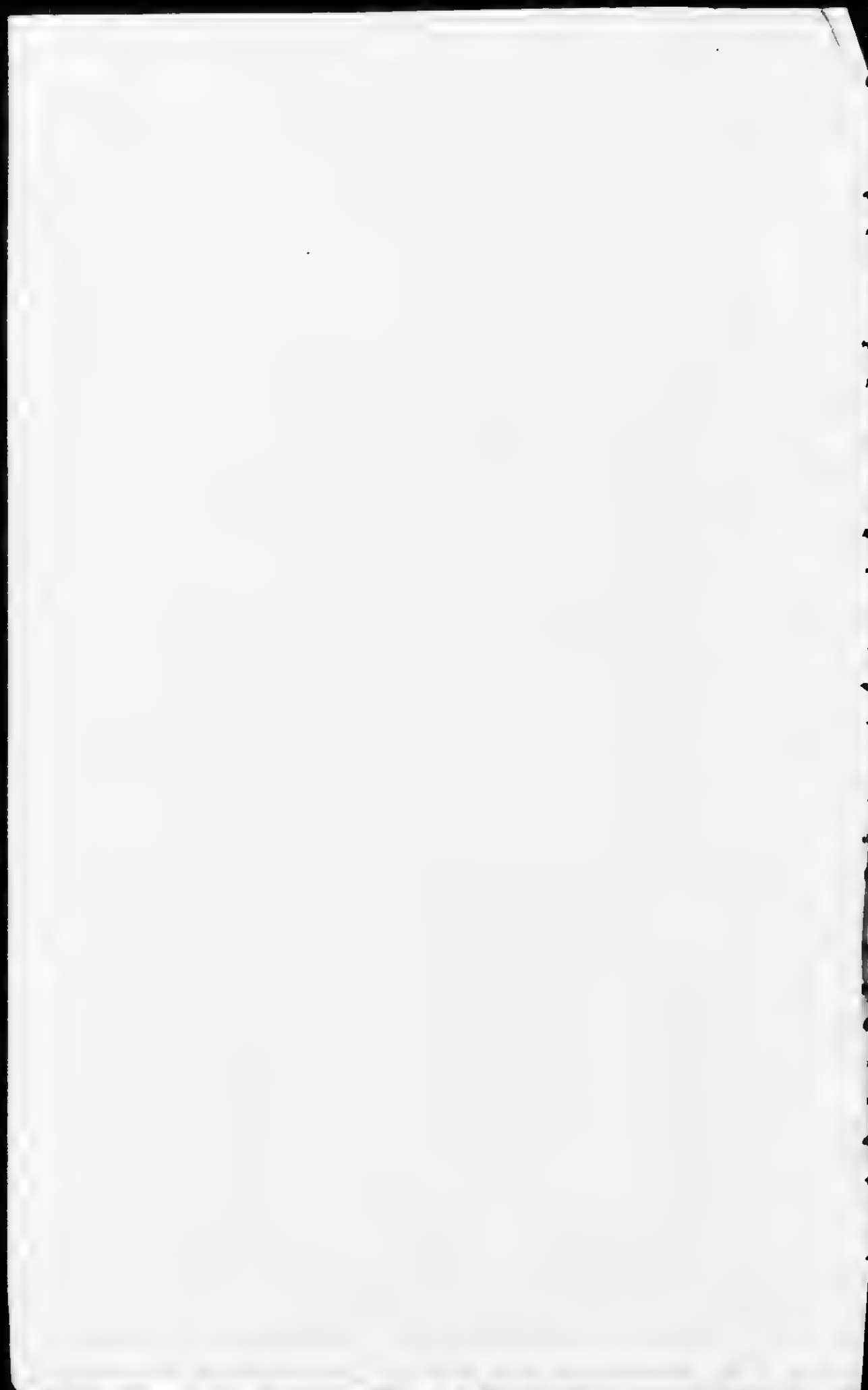


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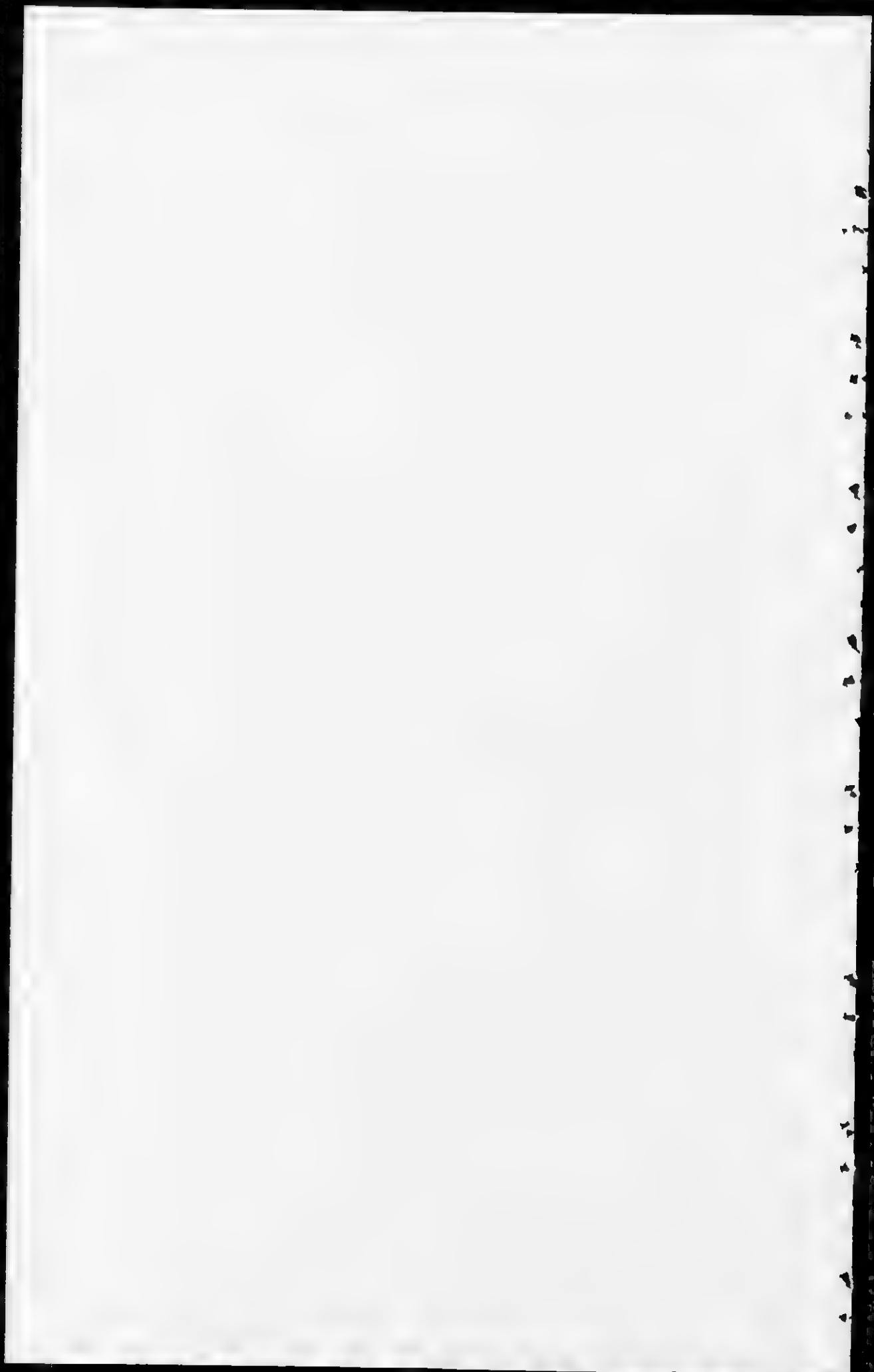
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,602

NATIONAL AVIATION TRADES ASSOCIATION and
BUTLER AVIATION COMPANY,

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

PAN AMERICAN WORLD AIRWAYS, INC. and
PORT OF NEW YORK AUTHORITY,

Intervenors.

ON PETITION TO REVIEW OPINIONS AND ORDERS
OF THE CIVIL AERONAUTICS BOARD

BRIEF FOR INTERVENOR PAN AMERICAN WORLD AIRWAYS, INC.

Issues Presented for Review

1. Whether the Civil Aeronautics Board ("the Board") made appropriate findings supported by substantial evidence in reaching the conclusion that the Agreement entered into between Pan American World Airways, Inc. ("Pan American") and the Port of New York Authority ("the Port Authority") on September 19, 1967 for the

operation of Teterboro Airport by Pan American ("the Agreement") "will not be inconsistent with the public interest" under the provisions of §408(b) of the Federal Aviation Act of 1958, as amended ("the Act") (49 U.S.C. §1378(b)).

2. Whether the Board made appropriate findings based on substantial evidence in reaching the conclusion that the Agreement will not result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the Agreement, under the first proviso in §408(b) of the Act (49 U.S.C. §1378(b)).

3. Whether the Board erred in refusing to permit petitioners to file a further brief or present oral argument.

Counterstatement of the Case

This proceeding involves the petition of National Aviation Trades Association ("NATA") and Butler Aviation Company ("Butler") brought pursuant to §1006(a) of the Act (49 U.S.C. §1486(a)), to review two opinions and orders of the Board. The first order under review approved, pursuant to §408(b) of the Act, the Agreement between Pan American and the Port Authority for the operation of Teterboro Airport, owned by the Port Authority (R. 2845-2482). The second order denied the petitions for reconsideration filed by the petitioners herein, which petitions were not addressed to the merits of the Board's decision but only to the Board's review of its Examiner's initial decision without receiving further briefs or hearing oral argument.

Parties

The Port Authority is a body established by compact between the states of New Jersey and New York (R. 123). Among its various activities, it is the owner, and currently the operator of Teterboro Airport which exclusively serves general aviation. It also operates the three major jet airports serving metropolitan New York—Kennedy, LaGuardia and Newark—which airports also serve general aviation as well as air carriers.

Pan American is an air carrier engaged principally in foreign and overseas air transportation.

NATA is a trade association representing various small individual companies in the general aviation service industry (R. 189-190). Butler is a company engaged in general aviation service with various facilities at major airports throughout the United States, including LaGuardia Airport in New York City (R. 1405).

Port Authority-Pan American Agreement

Teterboro Airport is located to the west of New York City, one mile west of Teterboro, New Jersey. It is approximately five miles from the George Washington Bridge and the Lincoln Tunnel and serves general aviation for the New York area (R. 1091). It is one of a number of general aviation airports conveniently located in the metropolitan area which serves general aviation (R. 1092). Facilities have not been developed and require modernization and expansion (R. 1163).

Pan American has long been cognizant of the air congestion developing in the New York metropolitan area and the increasing incapacity of the existing airports to cope

with it. With the belief that development of general aviation airports would redound to the benefit of general aviation as well as the air carriers, Pan American in September of 1964 expressed to the Port Authority an interest and entered into discussions concerning such developments of Teterboro Airport (R. 399). These discussions resulted in a letter of understanding dated August 6, 1965. There ensued negotiation of the definitive contract which was time consuming. Various alternate proposals from that encompassed in the letter of intent were considered (R. 400). However, the final Agreement followed the terms of the letter of intent. It was executed on September 19, 1967.

As part of the planning for development of Teterboro Airport, Pan American engaged Tippetts-Abbett-McCarthy-Stratton, engineers and architects, to prepare a development plan for the airport ("TAMS report"). Their recommended plan encompassed expenditures of approximately \$20,000,000 for capital improvements (R. 1085).

The Agreement between Pan American and the Port Authority for operation of Teterboro Airport provides for its operation by Pan American for a period of 30 years commencing upon completion of certain runway and taxiway construction which is currently being carried out (R. 130).

Under the Agreement Pan American will be responsible for the care, maintenance and repair of the airport and facilities thereon, and will assume all expenses of the operation (R. 132-133, 161-163). The Port Authority is relieved of any further investment cost or expense, and is to receive from Pan American a fixed fee plus a percentage fee (R. 133-138). All existing agreements in force

between the Port Authority and users of Teterboro Airport will be assigned to Pan American as of the effective date of the Agreement, and Pan American will receive all rents or fees payable to the Port Authority under such agreements and all revenues derived from the operation of the airport (R. 160-161).

The rules and regulations to be in effect as of the commencement of the term, for reasons of safety, health, preservation of property and for the safe and efficient use of the airport, are as set forth in an Exhibit to the Agreement (R. 783-828) and are, with minor exceptions identical to the rules and regulations now in effect at Teterboro Airport and the other Port Authority metropolitan airports. Such rules and regulations may be modified from time to time by the Port Authority with the consent of Pan American. Pan American may adopt additional rules not inconsistent with the Port Authority rules. Additionally, the schedule of charges for public areas at the airport is set forth in the Agreement (R. 837-839, 170) and provides that any charges to be assessed in excess of those in effect at other Port Authority airports are subject to approval of the Board of Commissioners of the Port Authority. This provision was supplemented by a condition imposed by the Board (R. 3037-3039).

The operation and use of the airport is circumscribed as to permissible uses, limited to general aviation and associated functions (R. 131). The Agreement specifically provides that helicopter services, activities and accommodations will at all times be made available on a fair, equal and not unjustly discriminatory basis to all persons wishing to use them, and to all airlines wishing to participate in any such arrangements or accommodations (R. 165).

As is made clear by these and other provisions, Pan American is fully committed by the Agreement to operate Teterboro Airport as a public airport in a nondiscriminatory fashion (R. 131-132, 164-165, 170). In addition, the Sponsor's Assurances under the Grant Agreement between the Port Authority and the Federal Aviation Administration ("FAA") (R. 1059) provides that "the Sponsor will operate the airport as such for the use and benefit of the public".

Under the Agreement the Port Authority will maintain substantial control over Pan American's operation of Teterboro Airport (R. 138-139, 140-141, 152). Among other things, the consent of the Port Authority is required for any agreement for the use and occupancy of the airport or construction of any facilities thereon (R. 141-142, 144-147).

Proceedings Before the Board

On September 26, 1967 Pan American filed the Agreement with the Board and requested a disclaimer of jurisdiction under §408(a)(3) of the Act, or, in the alternative, that the Board give expeditious treatment under the last proviso of §408(b) which provides for procedures to approve the application without hearing (R. 124).¹ Butler

¹ §408 of the Federal Aviation Act of 1958, as amended (49 U.S.C. §1378), provides, in relevant part:

"(a) It shall be unlawful unless approved by order of the Board as provided in this section—

• • • • •

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

• • • • •

(b) Any person seeking approval of a . . . operating contract . . . specified in subsection (a) of this section, shall present an

and NATA respectively, filed answers to Pan American's application requesting that the Board deny the application or alternatively set the matter for hearing. Both answers stressed in particular that Pan American would be in direct competition with those who provide services to general aviation (R. 180-190).

In setting the application for hearing the Board took note of the difficult problems of congestion in the New York area, the potential for relieving this congestion by developing reliever airports and directed an expedited hearing.

The Board's Associate Chief Examiner was assigned to hear this proceeding. Following a prehearing conference

application to the Board, and thereupon the Board shall notify the persons involved in the . . . operating contract . . . and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the . . . operating contract . . . will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such . . . operating contract . . . upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided*, That the Board shall not approve any . . . operating contract . . . which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the . . . operating contract; . . . *Provided further*, That, in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and determines that no person disclosing a substantial interest then currently is requesting a hearing, the Board after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may determine that the public interest does not require a hearing and by order approve or disapprove such transaction.¹¹ (Footnote omitted.)

and submission of voluminous information the Associate Chief Examiner, at the request of Butler, issued a subpoena to Pan American for the production of additional extensive documents. A substantial number of documents submitted in response to the subpoena were submitted by Butler as exhibits in the proceeding (R. 1531-1685).

At the public hearing a record of 472 pages of testimony plus 1,748 pages of exhibits was developed. During the course of the hearing, Pan American indicated that it did not intend to engage in the fixed base operation business and amended its application to exclude any issue as to this (R. 375, 2436-2437, 2187, 2223). Agreed language for this purpose was included in the Board's order as a condition to approval.

The Department of Transportation participated in the proceeding and urged approval of the Agreement on the grounds that the New York area airspace is highly congested, that development of reliever airports would alleviate this congestion and that private funds for the development of reliever airports should be encouraged (R. 1776-1781). No air carrier intervened.

The Associate Chief Examiner issued an initial decision approving the Agreement, subject to conditions. The decision outlined the provisions of the Agreement (R. 2846-2849), cited the applicable law to be considered in the proceeding, §§102, 408 and 414 of the Act, §2 of the Sherman Act (15 U.S.C. 2) and §7 of the Clayton Act (15 U.S.C. 18), and discussed the antitrust laws as they relate to the public interest under §408 of the Act. The initial decision also reviewed extensively the position of the parties in the proceeding (R. 2853-2861). It carefully considered

congestion at the New York metropolitan area airports, the benefits that would result from approval of the Agreement and anticompetition effects. The Examiner reached the following conclusion:

"Ultimate findings. In the light of the foregoing facts, findings, and conclusions and all the record, it is found that:

1. The agreement between Pan American World Airways, Inc., and the Port Authority, subject to a condition against Pan American's engaging regularly in the aviation service business except for its sale, ownership and operation of aircraft, will not be inconsistent with the public interest, will not result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the acquisition, (sic) and should be approved.

"3. The Board should retain jurisdiction to impose such further conditions as may be found reasonable . . ."
(R. 2279-2280).

Butler and NATA filed petitions for discretionary review of the Examiner's initial decision (R. 2890-2912, 2913-2924). Petitions for review were also filed by other parties. The Board granted review of the initial decision without further proceedings.

The 22-page opinion and order on review re-affirmed the findings and conclusions of the Examiner and made still further findings supporting approval of the Agreement.²

² The Board imposed an additional condition which provided that any charges proposed by Pan American in excess of those in effect as of September 19, 1967, of a similar nature at other Port Authority airports, required Port Authority approval. This condition was modified by the Board in its order on reconsideration to pro-

In summary, it stated:

"That the agreement between Pan American and the Port Authority . . . will not be inconsistent with the public interest, will not result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the arrangement, and should be approved;" (R. 2994).

The Board's order of approval contained the conditions which preclude Pan American from engaging regularly in the aviation service business and under which the Board retains jurisdiction.

On October 15, 1968 Butler and NATA petitioned the Board for reconsideration of Order 68-9-120, and sought the right to file further briefs and to present oral argument. The Board denied Butler's and NATA's petitions.

vide that the charges could be adjusted in accordance with a Department of Commerce Index without Port Authority approval as long as the charges did not then exceed similar charges at other Port Authority airports (R. 2997).

Summary of Argument

1. The conclusion of the Board that the Agreement is not inconsistent with the public interest is supported by appropriate findings and by substantial evidence, as follows:

(a) The Agreement between Pan American and the Port Authority for the operation of Teterboro Airport is designed to develop general aviation facilities and attract general aviation aircraft from the major jetports in the New York metropolitan area. Major congestion now exists at these jetports and is becoming progressively worse. The development of Teterboro Airport will make a substantial contribution to the public interest by helping to alleviate this congestion.

(b) The Department of Transportation, the Federal agency most expert in airport planning, supports the arrangement for a substantial investment in Teterboro Airport facilities and concurs that its development will help to alleviate air congestion in the New York metropolitan area.

(c) There is urgent need for development of Teterboro Airport now. In the absence of implementation of the Agreement, there is no assurance that the development will occur or that it will occur without substantial delay.

(d) Pan American is fully committed to operate Teterboro as a public airport in a non-discriminatory manner. The Agreement contains extensive provisions concerning non-discrimination. Likewise, the Sponsor's Assurances in connection with Federal aid to the Airport, with which Pan American is obligated to comply, contain similar provisions. Additionally, the Board

has retained jurisdiction to take appropriate action or to impose additional conditions if the circumstances should require.

(e) There is no conflict between Pan American's interest as an air carrier and Pan American's interest as operator of Teterboro Airport which, by the terms of the Agreement, will be restricted to use for general aviation. The development of Teterboro Airport will benefit both the air carriers and general aviation by relieving congestion in the metropolitan New York area and providing improved general aviation facilities.

2. The conclusion of the Board that the Agreement will not create a monopoly or monopolies and thereby restrain competition or prejudice another air carrier is supported by appropriate findings and by substantial evidence, as follows:

(a) There are a number of other airports available to serve general aviation in the New York area, and new and improved facilities are being planned. Pan American has no control over the development or operation of other airports in the area.

(b) There will be no restraint of competition resulting from the Agreement in connection with Pan American's sale of jet aircraft. Pan American is already engaged in the business of selling such aircraft, which is highly competitive. Pan American enjoys only a small part of the total market. The non-discrimination provisions of the Agreement, of the Sponsor's Assurances and the Board's retention of jurisdiction will prevent any restraint of competition in this regard.

(c) The provisions of the Agreement adequately restrict the granting of special advantages to Pan American passengers utilizing air taxi or helicopter

services between Teterboro and other airports in the New York metropolitan area.

3. The Board did not err in denying the Petitions for Reconsideration of the Board's action in denying the request to file further briefs and to present oral argument.

Argument

The petition for review before this Court was filed pursuant to §1006 of the Act (49 U.S.C. 1486). §1006(e) provides that the findings of fact by the Board are conclusive if supported by substantial evidence. Under this provision it is the agency's function to make findings of fact, to draw inferences therefrom, and to make such determinations as are required by the application of the facts to the statutory standards provided by Congress. Upon petitions for review, the Court determines whether the agency's findings are supported by substantial evidence, whether the application of such findings to the statutory standards are rationally explained, and whether the law is properly interpreted. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474 (1951); *American Airlines v. Civil Aeronautics Board*, 192 F. 2d 417 (C.A.D.C. 1951). The petitioners challenge the sufficiency of the Board's findings and the evidence to support them. These are fully adequate.

I.**The Board Made Appropriate Findings Supported by Substantial Evidence in Reaching the Conclusion That Approval of the Agreement Is Not Inconsistent With the Public Interest.**

§408(a)(3) of the Act makes it unlawful unless approved by order of the Board "For any air carrier . . . to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;"

§408(b) of the Act requires the Board, after hearing, to approve such transaction unless it finds that the transaction will not be consistent with the public interest. The Board correctly found that the development of Teterboro Airport would alleviate congestion in the New York metropolitan area and constitute a substantial benefit to the public, and that the Agreement was not inconsistent with the public interest (R. 2977).

A. The Associate Chief Examiner and the Board Correctly Concluded That There Is an Urgent Need for Development of Reliever Airports in the New York Metropolitan Area

While petitioners concede that there is a need for the development of Teterboro Airport (Brief, p. 19), they seek to play down the magnitude and the urgency of that need. In its order setting this case down for hearing, the Board adverted to the "difficult problems of congestion that currently exist at the major airline airports serving the New York metropolitan area" (R. 213). This not only

is a matter of common knowledge, but has been corroborated by several studies which are a part of the record (R. 1166-1226, 1228-1240).

This subject was dealt with by Dr. William J. Ronan, Chairman of the Metropolitan Commuter Transportation Authority in his report to Governor Nelson A. Rockefeller of New York in March, 1967 (R. 1230), wherein he stated:

"The air traffic problem particularly as it relates to existing major airports—John F. Kennedy, LaGuardia and Newark—is becoming more intolerable daily. Action to relieve air traffic congestion is long overdue, both from the viewpoint of present and future air operations and the economic development of the region."

The present and anticipated congestion at the New York airports can best be understood in terms of the growth of aircraft movements. Total aircraft movements at the region's three major airports, increased from 531,000 in 1955 to 855,000 in 1965. The forecast is for 1,014,000 in 1970 and 1,363,000 by 1980 (R. 1230). The magnitude of this growth becomes more evident when translated into terms of instrument flight rules movements at peak hours: the forecast of 206 movements per hour by 1970 will exceed capacity by 33 movements, and the expected 285 movements per peak hour in 1980 will exceed capacity by 112 movements (R. 1230).

The critical situation that will obtain in 1980 is further substantiated by the forecast of the Department of Transportation that the 588,900 scheduled air carrier operations in the New York hub (which includes all airports in the New York and Newark area) in 1965 will increase to 1,395,500 in 1980 (R. 1249). While the foregoing two fore-

casts of traffic in the New York area may differ in minor degree as to method of forecasting, they both show that the growth of aviation activity at the three major jetports as well as the metropolitan Newark-New York area will substantially outdistance existing facilities.

General aviation is growing at an even faster rate than air carrier operations. General aviation movements of 1,771,800 in the New York hub area in 1965 are forecast to increase to 6,606,100 in 1980 (R. 1249). On a nationwide basis, in 1966, 95,000 general aviation aircraft flew four times as many hours and twice as many miles as the approximately 2,000 aircraft operated by the commercial airlines (R. 1230), and it is anticipated that the general aviation fleet will double to about 200,000 aircraft within the next 10 years.³ Relating the growth of general aviation to aircraft movements at the three major New York airports, it is forecast that general aviation will comprise 37% of total movements by 1970 and will increase to 42% by 1980 (R. 1231).⁴

The outlook for the future in terms of arrival and departure delays is thus grim indeed. At the three major airports today, delays of from 10 to 20 minutes are routine, and at Kennedy Airport delays frequently reach 30 to 40 minutes. For 1970 the prediction is for a two-hour delay at John F. Kennedy Airport, an obviously unacceptable situation (R. 1231). Since the record in this case was

³ Interim Report of the Aviation Subcommittee to the Committee on Commerce, United States Senate, p. 4.

⁴ The Tri-State Transportation Committee, in its Report on General Aviation Airports for the Future, also forecast that capacity at the three major New York airports "is adequate to accommodate scheduled airline traffic through 1975 if general aviation activity, or at least most of it, can be encouraged to move to other airports" (R. 1208).

closed, the FAA has promulgated regulations effective June 1, of this year for the three major New York jetports which restrict air movements at peak hours.

The Agreement for the operation of Teterboro Airport, by Pan American, will develop a reliever airport to alleviate the current and anticipated congestion at the New York major jetports (R. 419). It will provide high quality facilities for general aviation, and by doing so, would assist air carrier operations, thus benefiting all concerned.

The desirability of this approach to the problem is widely acknowledged. It was proposed by the Tri-State Committee (R. 1180-1182); reiterated by Dr. Ronan in his latest report (R. 530); and strongly endorsed by the recent Interim Report of the Aviation Subcommittee of the Senate Committee on Commerce on the National Airport System. In this connection, the Report stated:

"The ideal and ultimate solution is the provision of separate and equal airport facilities for general aviation in the major hub areas." (p. 8).

This is precisely what the Agreement will accomplish at Teterboro.

It is important to note that transfer or diversion of general aviation from the major jetports to Teterboro Airport is not at issue in this proceeding. Even Butler concedes this (R. 1402) and, clearly, the need is so great that there is urgent need for any and all facilities that anyone is willing to develop or sponsor.

**B. The Department of Transportation's Statement
of Position Emphasizes the Desirability of Pan
American's Proposal Under the Agreement**

The Department of Transportation has as one of its purposes "... to facilitate the development and improvement of coordinated transportation services ...". (49 U.S.C. 1651(b)(1)). To accomplish that purpose the FAA was placed under the jurisdiction of the Department, and it has complete responsibility for the planning and layout of air routes for traffic in major metropolitan areas, the operation of navigational aids, en route and at air terminals and the operation of airport control towers (49 U.S.C. 1348(b)). Perhaps most significant for purposes of this case, FAA also has the responsibility for long range planning of a national airport system (49 U.S.C. 1353(a)). With this broad scope of responsibility, the Department through the FAA has prepared extensive studies focusing on the development of reliever airports. The FAA has also participated in or contributed to most of the published documents introduced into the record of this proceeding which relate to the question of air traffic congestion and delay.⁵

With such expertise and broad scope of knowledge as to the major question involved, the Department's statement of position in this proceeding should be accorded great weight. That statement makes three major points:

1. the "New York area airspace and airports are highly congested";

⁵ See, i.e. (R. 1224-1240) Jetports and General Aviation in the New York Metropolitan area; General Aviation Airports for the Future (R. 1166-1240).

2. that "Improved general aviation facilities in the New York metropolitan area are badly needed to alleviate this congestion"; and

3. that "The expenditure of funds by the private sector of the economy for the development of reliever airports should be encouraged".

Based on these, it reached the following conclusion:

"The Department believes that Pan American's undertaking to operate these airports for 30 years and its proposal to invest substantial amounts of money in their improvements, will lead to significant reductions in the existing and forecast congestion at the major New York airports." (R. 1776-1781).

C. The Board Correctly Found That Approval of the Agreement Meets a Present Urgent Public Need

The Examiner and the Board found that the development of Teterboro Airport would meet an existing urgent public need in relieving air congestion in the New York metropolitan area (R. 2976b-2977). Petitioners argue that disapproval of the Agreement would not mean defeat of the airport improvement program because other persons would or should step up to make similar improvements (Brief, pp. 50-51). Even if this contention were supported by the record, it would be irrelevant. The Board's duty was to consider the specific Agreement before it, not to speculate whether other parties might enter into similar arrangements for accomplishing the same purpose, or whether the Port Authority might do so itself. If this specific Agreement justifies approval under the standard of §408(b) of the Act, the Board *must* approve. It is a regulatory, not a management agency.

In any event, there are no facts of record which demonstrate that, if the Agreement is disapproved, Teterboro Airport will be developed to meet the urgent public need. The Port Authority has not adequately developed Teterboro Airport in the past (R. 1163). The runway and taxiway work now in process was undertaken under the Agreement and in contemplation of its approval, and it is noteworthy that the Grant Agreement for Federal funds for runway construction, which obligates the Port Authority to operate Teterboro for 20 years as a public airport, specifically provides that in the event of Board disapproval of the Agreement, the Port Authority may reimburse FAA for funds advanced, and be relieved of its obligations under the Grant Agreement (R. 1051). Further, Mr. Wiley, Director of Aviation for the Port Authority testified that the Port Authority would continue to operate the airport; he made no commitment as to any improvements:

"Q. Mr. Wiley, you indicated that if the agreement with Pan Am were disapproved by the Board that you would continue to operate the airport. Has the Port Authority made any decision as to what facilities or construction would be undertaken at Teterboro in that eventuality? A. No, we have not.

"Q. And you have made no commitment that any would be undertaken? You do not make any commitment here? A. No." (R. 2279).

There is no substantial evidence that any other person would take on the job of developing Teterboro Airport. The President of Butler, Mr. Dopp, presented hearsay testimony on this subject which was too general and out of date to be meaningful, and it fell far short of establish-

ing that anybody else was really interested in and prepared to make a substantial investment. Mr. Wiley testified that he knew of no such overture to the Port Authority (R. 2257). As to Butler itself, while Mr. Dopp professed a mild degree of past and present interest, he conceded that he had never made a detailed proposal and that Butler was not prepared to make an investment comparable to that planned by Pan American (R. 2600-2605). In view of the demonstrated need and the fact that Pan American is prepared to go forward with a program for development of Teterboro Airport at once, petitioners' argument that disapproval would not delay its development (Brief, p. 51) is unfounded.

In connection with petitioners' argument that a public agency, i.e., the Port Authority, should operate Teterboro Airport instead of Pan American, they indicate that there is a "real mystery" (Brief, p. 51) as to why the Port Authority decided to enter into the Agreement with Pan American. This point, as well as the delay that would ensue if the Agreement were disapproved, was focused on by the Board:

"We are also unpersuaded by the argument that the public interest requires public rather than private operation of the airport, and accordingly that the agreement should be disapproved and reliance placed upon the Port Authority for Teterboro's development. The Port Authority is the public agency which has the direct responsibility for operation of the airport. That agency has determined that the public interest would best be served by Pan American's private development of the airport, based upon its conviction that Pan American is qualified to promote and fully develop Teterboro Airport into one of the country's outstanding public

general aviation airports in the shortest interval of time. The Board should not interfere with the Port Authority's judgment as to the appropriate method for operation of the airport, absent a convincing showing that such method would be detrimental to the public interest. There is nothing in this record that would lead us to the conclusion that this is in fact the case. On the contrary, as the examiner noted, to require that the Port Authority itself undertake the improvement of the airport would inevitably lead to substantial delay." (R. 2980-2981).

**D. Pan American Is Fully Committed to Operate
Teterboro Airport on a Nondiscriminatory
Basis and Is Subject to Substantial Control**

The bulk of petitioners' arguments against the Agreement go to possible abuses which *might eventuate*. There is no evidence of record that any of the fears expressed are other than hypothetical, and, in any event, more than adequate safeguards are provided. Contrary to petitioners' argument that Pan American can operate Teterboro Airport with "practically unfettered control" its operation will be circumscribed by the provisions of the Agreement and Pan American's obligations to the FAA. Also, its operation will be subject to the continued jurisdiction of the Board. Petitioners' argument is basically that Pan American will violate and the Port Authority will not enforce the Agreement, and that the FAA and the Board cannot be relied upon to carry out the obligations which have been placed upon them by law.

1. Control by the Port Authority

Contrary to the allegations of petitioners, the Port Authority has not abdicated its responsibilities as a public

agency in connection with Teterboro Airport. Under the Agreement Pan American is fully committed to operate Teterboro as a public airport in a nondiscriminatory fashion. For example:

(a) Section 2 provides that the Airport operator shall "use the airport as a public airport in accordance with the aforementioned statutes [Chapter 41 of the Laws of New Jersey of 1949 and Chapter Forty-three and Eight hundred and two, respectively, of the Laws of New Jersey of 1947] and all other applicable laws and regulations . . ." (R. 131);

(b) Section 26—Services Furnished—provides "The Airport Operator agrees that it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable, and not unjustly discriminatory prices for all such services" (R. 164); and

(c) Section 35, which sets forth the charges initially to be in force, reiterates, "All charges with respect to the use of the airport or any part thereof including but not limited to those referred to in paragraph (a) above, shall be at fair, reasonable, and not unjustly discriminatory rates." (R. 170).

Also, under the Agreement the Port Authority will maintain substantial control over Pan American's operation of the airport. In addition to those aspects already discussed, *Pan American cannot enter into any agreement for the use and occupancy of the airport or construct any facilities without the consent of the Port Authority* (R. 141-142, 144-147). This is a far cry from "Unfettered control" by Pan American.

2. *Control by the FAA*

Under the Agreement Pan American has assumed and is subject to all the terms and conditions of a Grant Agreement between the Port Authority and the FAA (R. 172-173, 1045-1062). The Sponsor's Assurances to the Grant Agreement provide that the airport shall be operated for the use and benefit of the public and that the operator can only establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport. Also, exclusive grants for the conduct and aeronautical activity are prohibited and any agreement under which a privilege is granted to another at the airport must include provisions to furnish service at, and to charge for such service at a fair, equal and not unjustly discriminatory basis. Further, the Sponsor's Assurances require that if an arrangement is made by the Sponsor (Port Authority) for the operation of the airport by others, that the Sponsor reserves sufficient rights and authority to insure the airport will be operated and maintained in accordance with the Act and the covenants.

3. *Retention of Control by the Civil Aeronautics Board*

Throughout the proceedings before the Board, various conditions were proposed as a basis for approval. The main concern of Butler in intervening appears to have been its concern that Pan American would itself operate as a fixed base operator at Teterboro Airport. Pan American never had any such intentions and in an early stage of the hearing (R. 375) amended its application to provide that it would not engage in such activity except to such limited extent as might be required to carry out its obliga-

tion to see that such service was provided. This limitation was incorporated as a condition in the Examiner's initial decision and the Board's final order (R. 2997).

The Board was not unmindful that there might arise, in the future, situations which were unforeseen. The Examiner recommended, with Pan American's concurrence (R. 2448), and the Board imposed as a condition to approval of the Agreement that the Board retain jurisdiction. The specific condition provided:

"That jurisdiction over the proceeding is hereby retained for the purpose of imposing at any time, with or without hearing, such further conditions as may be found just and reasonable." (R. 2997).

E. The Board Correctly Determined That There Is No Conflict of Interest Between Pan American as an Air Carrier and Pan American as the Operator of Teterboro Airport

The Board dealt specifically with the conflict of interest argument as follows:

"Moreover, we are unable to conclude that Pan American's operation of the airport would give rise to any substantial conflict of interest with respect to general aviation or fixed base operators. Nor can we conclude, that the conflicts alleged, even to the extent they might exist, would provide any substantial incentive toward practices in the operation of Teterboro Airport which would be in restraint of competition or otherwise adverse to the public interest."

* * * * *

"Even if there were a conflict between airlines and general aviation resulting from congestion at the major New York metropolitan airports, there nevertheless would be no incentive for Pan American to operate Teterboro in a manner which would be detrimental to

general aviation. With respect to the operation of the Teterboro Airport, the interests of Pan American and general aviation, as well as the public interest, are parallel, that is, the fullest development of Teterboro Airport for general aviation in a manner which will provide relief of congestion at the major New York metropolitan jetports." (R. 2986-2987).

The petitioners have sought to challenge these findings on the ground that the Board did not understand or deal with the conflicts of interest which would exist by reason of the Teterboro Agreement.

At the outset, the petitioners' prime concern in intervening in this proceeding was their fear of direct competition from Pan American in the general aviation services field:

"Statement of Butler's Position

1. The applications pose two important issues of broad significance to the public interest. They involve (1) whether a giant corporation with vast financial resources should be permitted to invade an industry characterized by small companies and intensive competition, and (2) whether under the circumstances presented, the exclusive right to provide general aviation services should be independent of air carrier control." (R. 180, see also R. 190).

Also at that time Butler had expressed an interest to Pan American in establishing a fixed base operation at Teterboro, but postponed any further discussion in view of its intervention in this proceeding (R. 490). Had Pan American intended itself to compete in the business of aviation services at Teterboro, there might have been some basis for petitioners' argument. With that issue with-

drawn (p. 8, *supra*) petitioners have tried in each successive filing to dream up some conceivable conflict.

Atlantic Aviation, which, as the fixed base operator at Teterboro would have much more cause for concern than Butler if there really were such a "conflict", disagreed with this contention. In a letter sharply criticizing NATA's petition in this case, Mr. Richards, President of Atlantic Aviation, wrote as follows:⁶

"You know as well as I, Frank, that many of our metropolitan airports are reaching a point of dangerous saturation. We also know that this condition was not brought about by the doubling, tripling or quadrupling of the number of air carrier airplanes. It was brought about by the wonderfully rapid growth of general aviation. I would submit that we who represent general aviation should recognize the problems that exist and acknowledge that we have contributed to the present situation. I am not prompted to attempt to find a solution to the problem by claiming that the airlines are trying to run us out of business or any other argument based on emotion. I am confident that the airlines recognize, as we do, that private aviation and business aviation are here to stay, that we have a mutual problem, and the problem must be solved, that there are solutions to these problems, that these solutions can be found, but only if we work together in a group effort to find them.

"I think it's about time that all of us in the aviation industry stop cursing the darkness and light a few candles." (R. 494).

⁶ Mr. Richards' oral testimony related entirely to the financial implications of the forecasts in the TAMS report, and in no way detracted from the views quoted in the text (R. 2546-2550).

While petitioners continue to indulge in much speculation and lengthy argument in an attempt to describe conflict of interest, their latest real contention in this regard is that Pan American would use the Agreement to curb the free expression of general aviation's point of view with regard to the allocation of rights in the congested areas.⁷

The suggestion that Pan American will not treat the general aviation users fairly at Teterboro, in order to stifle their expression of view with regard to the use of other airports and that this will be effective as to the whole industry, strains credulity. Such conflict simply does not exist because of Pan American's interest in developing Teterboro. However, if attempts at any such practice were to develop, the provisions of the Agreement, together with the Board's retention of jurisdiction, would certainly provide adequate means for remedying the situation. The speculative possibility that such conflict might arise does not outweigh the public benefits which the Board found would be derived from the prompt implementation of the Agreement.

⁷ An attempt is made on page 29 of petitioners' brief to argue that Pan American might not wish to develop Teterboro fully for general aviation, despite its heavy financial commitment. However, this argument is pure speculation and is, in effect, abandoned in the next paragraph of the brief, which says that the Board's contrary finding is not responsive to the fundamental issue, which is whether Pan American "can and will exert its power as Teterboro's landlord to curb the free expression of general aviation's point of view."

II.

The Board Made Appropriate Findings Based on Substantial Evidence in Reaching Its Conclusion That the Agreement Does Not Create a Monopoly and Thereby Restrain Competition or Jeopardize Another Air Carrier.

In addition to an affirmative determination of the public interest issue raised by §408 of the Act, discussed above, the Board also was required to and did determine, in the words of the first proviso of §408(b) of the Act that the Agreement "will not result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party" to it. The Board correctly found that the proviso was not applicable.⁸

The findings required to make it applicable are explained in *Butler Aviation Company v. CAB*, p. 519, *supra*, as follows:

"Restraint of competition or jeopardy to another air carrier is not enough to trigger the proviso unless brought about by the creation of a monopoly; *per contra* the creation of a monopoly is not enough un-

⁸ We recognize, as did the Examiner and the Board, that in light of the immunity from the antitrust laws conferred by §414, the Board must consider anticompetitive effects less extreme than those covered by the first proviso of §408 in passing on the public interest issue. The only suggestion of any such effect was in the "conflict" argument, which we have shown to be without merit. In addition, the benefits to be derived from approval of the Agreement are so substantial as to offset any incidental anticompetitive effect. In this portion of the brief we deal only with the question whether the Agreement create the "extreme" anticompetitive effects "limned in the proviso" (*Butler Aviation Company v. CAB*, U.S. Court of Appeals, 2nd Cir., 389 F. 2nd 517, 519 (1968)).

less it would restrain competition or jeopardize a non-party air carrier."

We will therefore consider each of these subissues separately. In fact, however, no monopoly is created, nor do the proposed operations in any way restrain competition or jeopardize another air carrier.

A. The Agreement Creates No Monopoly

The first question that properly arises in considering this subissue is "monopoly of what"? The pertinent area of inquiry relates to airports that might serve the New York metropolitan area. Not only are there a number of such airports, and more in the planning, but by their very nature, Pan American could not conceivably control or restrict entry into the "market".

1. *Many Other Airports Serve the New York Hub Area and New and Improved Facilities Are Being Planned*

Teterboro is only one of the general aviation airports that serve the New York hub area. There are a number of others.

Westchester County (White Plains) Airport, located 26 miles from Times Square, accommodated 234,947 general aviation operations during the calendar year 1966. 136,061 of these were itinerant operations, the largest number of such operations handled by any airport, including the Port Authority airports, in the greater New York metropolitan area. Westchester County Airport is an all-weather airport with instrument landing facilities and runways up to 6,550 feet in length (R. 518).

MacArthur (Islip) Airport, located 40 miles from Times Square, accommodated more total general aviation opera-

tions than any other airport, including the Port Authority airports, during the calendar year 1966. MacArthur handled a total of 303,169 general aviation operations, of which 127,448 were itinerant operations, during the calendar year 1966. MacArthur also is an all-weather airport with instrument landing facilities, with runways up to 5,032 feet in length (R. 518).

Morristown Municipal Airport, located 23 miles from Times Square, accommodated 156,975 general aviation operations, 67,883 of which were itinerant, in 1966. Plans have been made for the extension of Runway 5-23 to 6,000 feet with provision of instrumental landing facilities. This airport, upon completion of these improvements, will offer a general aviation potential comparable to Teterboro, Westchester, MacArthur or Republic Airports (R. 518-519).

The recently announced New York Metropolitan Transportation Authority program for improved general aviation facilities in the State of New York includes plans for the improvement of Spring Valley Airport (Rockland County), located 24 miles from Times Square (R. 530). This improvement program contemplates runway extension to 5,000 feet and installation of appropriate navigational facilities.

Republic Airport located at Farmingdale, Long Island, 29 miles from Manhattan has recently been acquired by Metropolitan Transit Authority by condemnation (R. 1237-1238). It will be developed into a modern general aviation airport and be a part of a transportation center with rapid transportation to Manhattan (R. 526-576).

The Tri-State Transportation Committee report of May 1965 stated that outside of a 10-mile radius but within a

20-mile radius of Times Square, three additional general aviation airports were available, all located in New Jersey. These airports are Linden, Caldwell-Wright and Totowa-Wayne. If the 20-mile radius is extended to 30 miles, there are seven additional airports in New Jersey (Lincoln Park, Towaco, Hanover, Somerset Hills, Hadley, Preston and Red Bank) and three in New York (Christie, Ramapo Valley and Zahns) (R. 519).

In addition to all of the foregoing, there are also the three Port Authority jetports, which handle a substantial volume of non-airline activity: For the year ended in December 1967 J. F. Kennedy handled 64,551 (R. 469) movements, La Guardia 115,852 (R. 470) movements and Newark 68,019 (R. 471) movements. Even were there to be put restrictions on these airports as to time of use, they are substantial facilities, serving the metropolitan New York area general aviation. La Guardia and Newark Airports are equally as accessible to Manhattan as Teterboro Airport.

With the current general aviation facilities available in the metropolitan area, extensive plans for new and improved facilities to meet the increasing demands of general aviation, and the prospect that still more are forthcoming, there is no basis for a finding that the proposed operations of Teterboro Airport will create a monopoly. The Examiner properly evaluated the availability of these airport facilities and concluded:

“ . . . their availability indicates that there is no monopoly in Teterboro Airport with respect to service to Manhattan.” (R. 2871).

2. Airport Entry Is Not Susceptible to Monopoly

Again unlike detergents or bleach, *FTC v. Procter and Gamble Co.*, 386 U. S. 568 (1967), it is not really possible to monopolize the airport industry. For one thing, any given airport has only a limited capacity. When that has been "sold", there is nothing more to be marketed. Further, there can be no real question that within a relatively few years these airports and all others in the New York metropolitan area will be used to capacity. The problem is one of capacity to cope with demand.

In addition, with airports typically created or developed by governmental entities, how could Pan American conceivably restrict future entry into the field? Is it going to be able to prevent New York State, or New Jersey, or Connecticut, or the Port of New York Authority, from pursuing such projects? Obviously not, even if it were so foolish as to try. In short, "monopoly" in the usual sense is simply inapplicable to the situation presented here.

B. Even If the Agreement Creates a Monopoly, There Is No Restraint of Competition or Jeopardy to Another Air Carrier Caused Thereby

As noted above, even if the Teterboro Agreement created a monopoly, the Act would require disapproval only if a restraint of competition or jeopardy to another air carrier is caused thereby. No contention is made that there is jeopardy to another air carrier. No air carrier intervened or participated in the proceeding before the Board. Since no monopoly is created, it is hypothetical to discuss the restraint of competition; however, petitioners raise two issues which warrant comment.

1. *Restraint of Competition in the Sale of High Performance Aircraft*

Petitioners argue that by virtue of Pan American operating Teterboro Airport, its activity in the sale of Falcon aircraft thereby creates a restraint of competition within the first proviso of §408(b). However, Butler does not sell such aircraft and Atlantic Aviation located at Teterboro does. As the Examiner noted (R. 2872):

“ . . . it [Atlantic] has expressed no fears that Pan American will squeeze out Atlantic Aviation Corporation.”

Also, no aircraft manufacturer or distributor intervened or participated in this proceeding. Pan American is already in the business of sale of aircraft with a facility at Westchester County Airport and it hardly matters at what airport it bases the aircraft which it offers for sale. Its main sales effort is conducted from its main city office and demonstrations are made at airports throughout the country where there are prospective purchasers (R. 439). Here the decision in the *Eastern Air Lines-Remmert-Werner Acquisition* case is dispositive. The Examiner and the Board (Orders E-25973, 25794) found that this is a highly competitive business, and the record in that case and here establish that the Falcon aircraft sold by Pan American enjoy only a relatively small share of the total market (Order E-25973, pp. 14-17; *Butler Aviation Company v. CAB*, *supra*, pp. 518-519; R. 131-132, 164-165, 170, 2620).

2. *Restraint of Competition in the Transportation of Passengers Connecting to Air Carrier Flights*

Petitioners contend that in connection with helicopter and air taxi service from Teterboro Airport, Pan Ameri-

can will be in a position to gain an advantage for itself. Contrary to petitioners' allegations that Pan American could exclude such service from Teterboro to other connecting airlines, Pan American's obligation in connection with operation of a public airport as well as all the controls placed upon it, would preclude such action (Part I, D., *supra*). In addition, the Agreement spells out, with great specificity, Pan American's obligations with regard to helicopter service, the operators thereof as well as other airline users. Those provisions are quoted in the Appendix hereto and circumscribe petitioners' argument in this regard.

The Board specifically addressed itself to this argument and stated:

"... it is alleged that there would be a conflict of interest and restraint of competition by reason of the ability of Pan American to utilize its control of Teterboro in a manner which would favor general aviation passengers connecting with Pan American's scheduled airline traffic at the Kennedy Airport. . . . However, section 26(e) of the agreement specifically provides that any helicopter operations and related services at Teterboro, 'will at all times be conducted and provided on a fair, equal and not unjustly discriminatory basis with respect to all persons wishing to use any of the same and to all airlines wishing to participate in such arrangements, activities and accommodations if any such air line operates within the Port of New York District.' A similar provision is made with respect to the sale of tickets for scheduled airline services in conjunction with helicopter flights. Moreover, in view of the very limited proportion of Teterboro traffic which would presumably connect with Pan American's overseas and foreign scheduled airline services, it

would appear that an attempt to provide a service limited to accommodating this traffic would not be economically feasible; and that Pan American would have no incentive to violate the anti-discrimination provisions of the agreement by doing so." (R. 2988-2989).

III.

The Board Did Not Err in Denying the Petitions for Reconsideration of the Board's Action in Denying the Request to File Further Briefs and to Present Oral Arguments.

Petitioners contend that the Board did not comply with the provisions of §1004(a) of the Act (49 U.S.C. 1484(a)) in granting review of the initial decisions of the Board without further proceedings. That section provides in part "... In all cases heard by an examiner or a single member the Board shall hear or receive arguments on request of either party." Petitioners' contention is without merit.

The Board did, in fact, receive arguments. The Board addressed itself to this point in its order on reconsideration:

"To begin with, in deciding this case the Board had before it in the record and considered exhaustive argument on the issues presented to the examiner. Butler alone filed a 72-page brief to the examiner and its petition for review constituted 20 pages, the limit permitted.⁸ NATA filed a brief of only nine pages to the examiner. However, its petition for review was slightly longer than its brief, covering six separate points on the merits. Except for alleged procedural errors raised

by Butler in its petition for review, the issues raised in the petitions for review were substantially the same issues considered by the examiner in his opinion." (R. 3035 ftn. omitted).

The Board added that it "took into consideration Butler's brief to the Examiner in determining that further procedures were not warranted as well as its petition for review" (R. 3035).

In any event the Board acted within its statutory authority in not receiving further briefs or hearing oral argument. Rule 28(d) of the Board's Rules of Practice provides for shortened procedures on Board review of initial decisions (14 C.F.R. 302.28(d)(1)).⁹ This rule authorizes the Board to issue an order upon review of an initial decision "... without further proceeding on any or all of the issues where it finds that matters raised do not warrant further proceedings." The Board made such a finding here:

"In view of the extensive nature of the proceedings before the examiner, and the nature of the issues raised in the petitions for review, the Board finds that further proceedings are not warranted." (R. 2976)

⁹ This rule was issued pursuant to Reorganization Plan No. 3 of 1961 (75 Stat. 837, 49 U.S.C. 1324 Note) which vested in the Board "a discretionary right to review" of an initial decision of an examiner "... in such manner as the Board shall by rule prescribe."

CONCLUSION

Petitioners' Brief is long and diffuse, precisely because it really has nothing to say. After a full and fair hearing in which a lengthy record was developed, the Board correctly found that the Agreement will not be inconsistent with the public interest, will not result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the Agreement. There is no basis for any change in that decision.

Respectfully submitted,

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New York, New York 10017

Dated: May 12, 1969

New York, New York

APPENDIX

Section 26(e) of the Agreement provides in part:

"(e) Without limiting the generality of any provision of this Agreement it is understood that the use of the Airport for helicopter flights, whether scheduled or not, and all activities, services and accommodations at or from the Airport in connection with said helicopter flights, will at all times be conducted and provided on a fair, equal and not unjustly discriminatory basis with respect to all persons wishing to use any of the same and to all airlines wishing to participate in such arrangements, activities and accommodations if any such airline operates within the Port of New York District. Further, the Airport Operator will insert and enforce appropriate provisions to such effect in any agreements it may enter into or arrangements it may make with any operator or operators of said helicopter flights.

"It is understood furthermore that the sale of passage and service for scheduled flights at other airports when in conjunction with the sale of passage on helicopters or otherwise as referred to above will at all times be available on a fair, equal and not unjustly discriminatory basis to all airlines wishing to participate in such arrangements and if any such airline operates within the Port of New York District."

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,602

NATIONAL AVIATION TRADES ASSOCIATION
and BUTLER AVIATION COMPANY,

Petitioners,

-VS-

CIVIL AERONAUTICS BOARD,

Respondent,

PAN AMERICAN WORLD AIRWAYS, INC., and
THE PORT OF NEW YORK AUTHORITY,

Intervenors.

*On Petition To Review Opinions and Orders
of the Civil Aeronautics Board*

BRIEF FOR INTERVENOR
THE PORT OF NEW YORK AUTHORITY

MAY 12 1969

May 12, 1969

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(i)

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BRIEF FOR INTERVENOR
THE PORT OF NEW YORK AUTHORITY

STATEMENT OF ISSUES PRESENTED FOR REVIEW
STATEMENT OF THE CASE
ARGUMENT

Intervenor, The Port of New York Authority (Port Authority)
has been permitted to review the draft of Brief for Respondent, The

Civil Aeronautics Board (Board) and the draft of Brief for Intervenor, Pan American World Airways, Inc. (Pan Am) and has concluded that any further restatement by it of the Issues Presented, of the Case and of Argument (except the reasons hereinafter set forth) would be unnecessary repetition of matters already adequately presented and, thus, unduly burdensome to the Court. The Port Authority, therefore, adopts by reference the Arguments of the Board and Pan Am.

The additional argument below, directed to the "public interest" considerations involved and relating to the nature of the Port Authority, its powers and duties with regard to airports and its own plans for the development of Teterboro Airport, is submitted for the consideration of the Court.

1. DEVELOPMENT OF TETERBORO AIRPORT BY PAN AM WILL SERVE THE "PUBLIC INTEREST".

The Port Authority is

"a body corporate and politic created by a compact between the States of New Jersey and New York (R.S. 32:1-4) with the consent of the Congress of the United States. (42 Stat. 174). It is an agency of both States to further their common interests within the jurisdiction committed to it." (citations omitted)

Bergen County v. Port of New York Authority, et al., 32 N.J. 303, 306 (1960).

The Compact between the States which created the Port Authority provides, in Article VI (R. S. (N.J.) 32:1-7; *McKinney's Unconsol. Laws of N.Y.*, § 6407), that

"The port authority shall constitute a body corporate and politic, with full power and authority to purchase, construct, lease and/or operate any terminal or transportation facility. * * *" (full text in Appendix hereto).

In 1947, the States enacted concurrent legislation, implementing and supplementing their Basic Compact, to facilitate the financing and effectuation of air terminals by the Port Authority (R. S. (N.J.) 32:1-35.1 *et seq.*; *McKinney's Unconsol. Laws of N.Y.*, § 6631). In Section 3 of that legislation (R. S. (N.J.) 32:1-35.3; *McKinney's Unconsol. Laws of N.Y.*, § 6633), "air terminals purposes" were defined to mean

"* * * the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of air terminals owned, leased or operated by the Port of New York Authority * * * or operated by others pursuant to agreements with the Port Authority." (emphasis supplied) (full text of definition in Appendix hereto).

This air terminal legislation enunciated the States' view that

"* * * the problem of furnishing proper and adequate air terminal facilities within the (Port of New York) district is a regional and interstate problem, and that it is and shall be the policy of the two States to encourage the integration of such air terminals so far as practicable in a unified system." (emphasis supplied).

and, in furtherance of that policy, authorized the Port Authority to effectuate the required air terminals. (R.S. (N.J.) 32:1-35.1; *McKinney's Unconsol. Laws of N.Y.*, § 6631). (full text in Appendix hereto) To enable it to carry out the policy of the States, the Port Authority was granted very broad powers.

"The Legislatures of New York and New Jersey have envisaged and approved the exercise by the Port Authority of the widest range of managerial latitude in the field of air terminal operations, providing that the Authority should have 'sole discretion' over 'all details of financing, construction, leasing, charges, rates, tolls, contracts and the operation of air terminals * * * controlled by (it)' and that 'its decision in connection with any and all matters concerning such air terminals shall be controlling and conclusive.' N.J. S.A. 32:1-35.10"

State of New Jersey v. D'Aquino, 56 N.J. Super. 230 (App. Div. 1959) Certif. den. 30 N.J. 603 (1959) Cert. den. 361 U.S. 944 (1959).

In view of the foregoing statutory provisions, there can be no doubt that the Port Authority was fully empowered to make the operating agreement with Pan Am which was afforded by the Board in the orders here under review.

Nor can there be any doubt that the implementation of the agreement will further the policy of the two States. When the basic concept of Pan Am's redevelopment and operation of the Airport was publicly announced in August 1965, the Governor of the State of New Jersey and a representative of the Governor of the State of New York *participated* in the press conference at which the announcement of the basic operating arrangement was made in support of the arrangement. (Ex. PNYA-1 - p. 1 R. 1853)

The definitive agreement submitted to the Board is simply a detailed amplification of the basic understanding between the parties. But, and of the greatest significance here, it makes positive the obligation of Pan Am to continue the operation of the Airport as a "public airport" in accordance with the air terminal legislation of

the States of New York and New Jersey which is cited in the first "Whereas" clause therein. (Agreement, Section 2; R. 131)

The reasons why the Port Authority made the agreement were detailed to the Board in exhibit form (Ex. PNYA-1, pp. 1-5; R. 1853 to 1857) and in testimony (Tr. 72-13 to 25, R. 2236; Tr. 87-24 to 88-7, R. 2251, 2).

Shortly stated, those reasons were that Pan Am is capable of and prepared to undertake a vigorous improvement and promotional program for the further development of Teterboro as a first-class public airport for general aviation and to complete that development in the shortest interval of time. The record also discloses that the Port Authority itself has no present plans for a development of the airport similar to that proposed by Pan Am, but rather that, failing approval of the agreement, the Port Authority will with regard to matters other than the runway improvements, simply continue to operate the Airport as it has in the past. (Tr. 118-9 to 24, R. 2282)

Thus, the record makes clear that the Port Authority, in carrying out its duties to the States which created it, exercised the authority granted it by the States in making this agreement by reason of its judgment that the making and implementation thereof would further the public policy of the States regarding the furnishing of "proper and adequate air terminal facilities" within the Port of New York District.

Petitioners do not suggest that Pan Am will not carry out its agreement to redevelop Teterboro Airport. Rather, they contend, in Point III of their Brief, that Pan Am should not be permitted to do so because the Port Authority *might* do the same thing. The "public interest" in the development of the Airport will be served if it is accomplished by either - but approval of the agreement, by its terms, insures its prompt accomplishment. Absent approval, there is

no such assurance. (Tr. 118-9 to 25; R. 2282) The benefits flowing from the agreement are not, as suggested by petitioners in Point III of their Brief, illusory. They are real. While petitioners might prefer to have the Airport developed further by the Port Authority rather than Pan Am, under the circumstances, the agreement can hardly be found "not consistent" with the public interest.

CONCLUSION

For the reasons set forth in the Briefs adopted herein by reference and the additional reasons hereinabove stated, the Port Authority requests that this Court affirm the Orders of the Board here under review.

Respectfully submitted,

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Attorneys for Intervenors
THE PORT OF NEW YORK
AUTHORITY

APPENDIX

Compact of April 30, 1921 Between the States of New Jersey and New York

ARTICLE VI.

"The port authority shall constitute a body, both corporate and politic, with full power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within said district; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it. No property now or hereafter vested in or held by either state, or by any county, city, borough, village, township or other municipality, shall be taken by the port authority, without the authority or consent of such state, county, city, borough, village, township or other municipality, nor shall anything herein impair or invalidate in any way any bonded indebtedness of such state, county, city, borough, village, township or other municipality, nor impair the provisions of law regulating the payment into sinking funds of revenues derived from municipal property, or dedicating the revenues derived from any municipal property to a specific purpose.

"The powers granted in this article shall not be exercised by the port authority until the legislatures of both states shall have approved of a comprehensive plan for the development of the port as hereinafter provided."¹

¹The Comprehensive Plan was adopted by the states in 1922. It is found at R.S. (N.J.) 32:1-25 to 35; McKinney's Unconsolidated Laws of N.Y., §§ 6451 to 6461.

R.S. (N.J.) 32:1-7; McKinney's Unconsolidated
Laws of N.Y., § 6407.

Air Terminal Legislation of 1947

"Upon the concurrence of the State of New York as provided in section sixteen hereof, the States of New Jersey and New York declare and agree that each air terminal within the Port of New York District serves the entire district, and that the problem of furnishing proper and adequate air terminal facilities within the district is a regional and interstate problem, and that it is and shall be the policy of the two States to encourage the integration of such air terminals so far as practicable in a unified system.

"Accordingly, in furtherance of said policy and in partial effectuation of the Comprehensive Plan, heretofore adopted by the two States for the development of terminal and transportation facilities in the Port of New York District, the States of New Jersey and New York agree that the Port of New York Authority (hereinafter called the Port Authority) shall be authorized to effectuate, establish, acquire, construct, rehabilitate, improve, maintain and operate air terminals, as hereinafter defined, within the Port of New York District, and the two said States further agree that all cities and other State and local agencies shall be and they hereby are authorized to co-operate with the Port Authority in the development of air terminals, as hereinafter provided. * * *

R.S. (N.J.) 32:1-35.1; McKinney's Unconsolidated
Laws of N.Y., § 6631.

"The following terms as used herein shall mean:

* * *

“‘Air terminal purposes’ shall mean the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of air terminals owned, leased or operated by the Port of New York Authority (including airports operated under revocable permits) or operated by others pursuant to agreements with the Port Authority. * * *”

* * *

R.S. (N.J.) 32:1-35.3; McKinney's Unconsolidated Laws of N.Y., § 6633.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 22,602

FILED May 22 1969

NATIONAL AVIATION TRADES ASSOCIATION
and BUTLER AVIATION COMPANY.

Nathan J. Paulson
CLERK

Petitioners

v.

CIVIL AERONAUTICS BOARD.

Respondent

PAN AMERICAN WORLD AIRWAYS, INC. and
PORT OF NEW YORK AUTHORITY.

Intervenors

On Petition To Review Opinions and Orders
of the Civil Aeronautics Board

REPLY BRIEF FOR PETITIONERS

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May 26, 1969

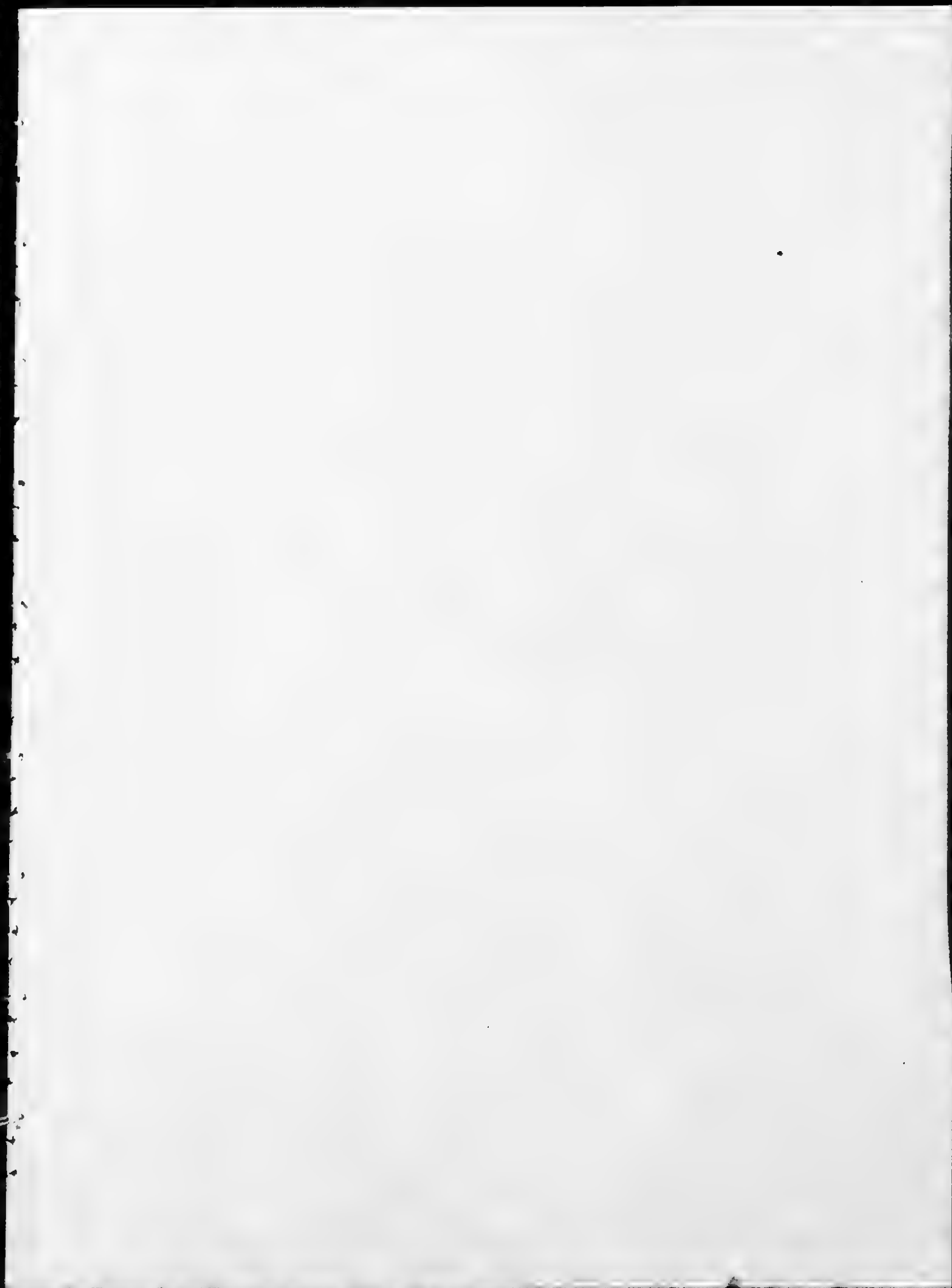


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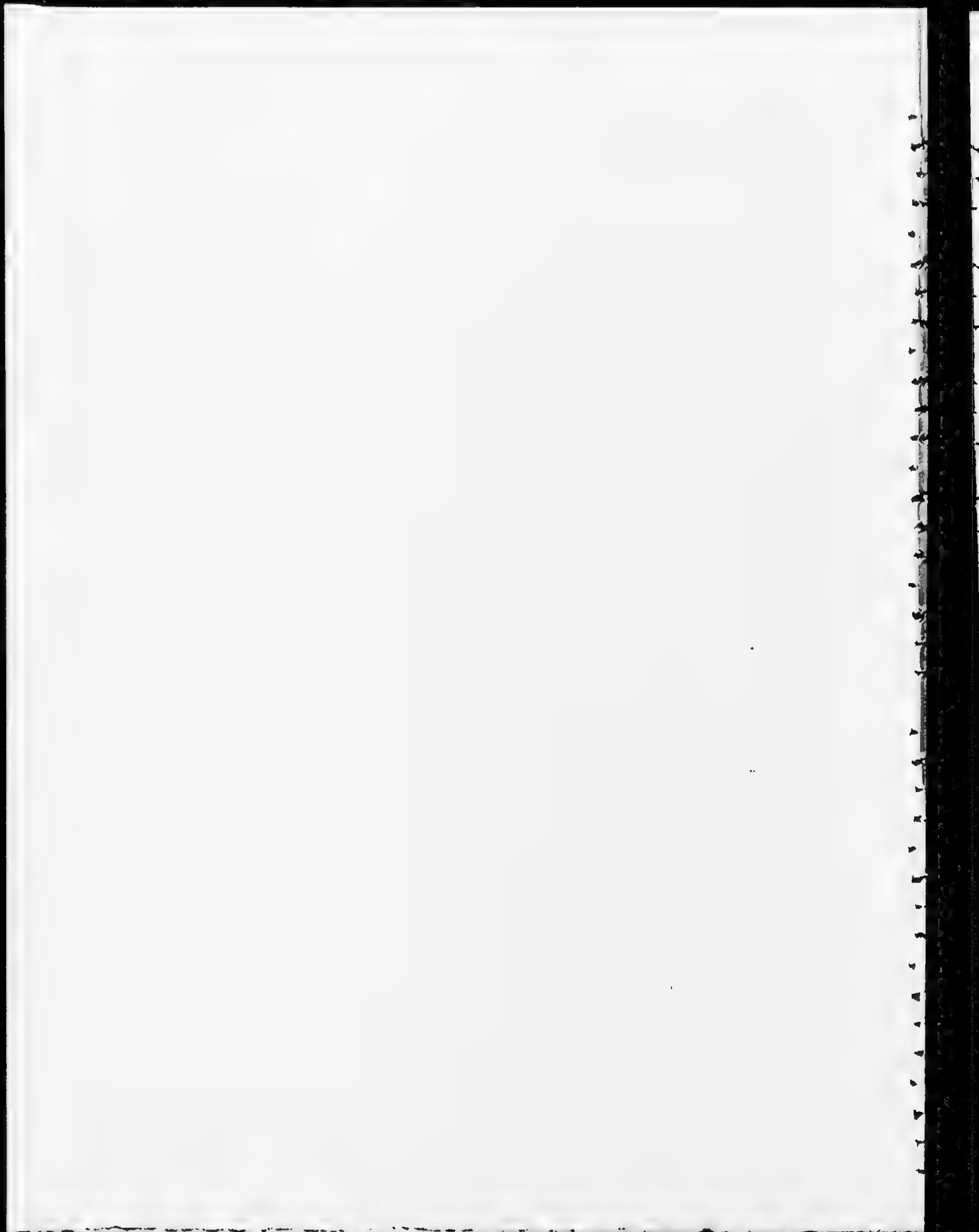
MISCELLANEOUS:

*Hearings Before Subcommittees of Senate Committee on Commerce Regarding
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THE BOARD'S ARGUMENTS, AND THE VALIDITY OF ITS DECISION, REST ON PUBLIC BENEFITS WHICH WILL BE REALIZED EVEN IF THE AGREEMENT IS DISAPPROVED

It is beyond serious dispute that the Teterboro agreement would give wide powers over rates, entry into business, and rules and regulations to Pan Am, which, as an airline, has a direct conflict of interest with general aviation and, as a private business, would have every incentive to maximize its own profits. It is equally obvious that these wide powers offer untold opportunities for abuses *during the next thirty years*. Although the respondents attempt to downgrade the significance of these opportunities, they cannot deny them. Therefore, they rely primarily on an attempt to show that the public benefits flowing from the Pan Am agreement outweigh the disadvantages.

Everyone recognizes that public benefits would flow from the development of Teterboro. Indeed, we so stated at the start of this proceeding. (R. 1402). Thus, the *only* question from the outset of this case has been whether *Pan Am's* operation at Teterboro will entail some public benefits that would be lost if the agreement were disapproved. The Board's decision, as well as the respondents' briefs, fail to cite a single public benefit which will result from *Pan Am's* operation of Teterboro as compared to the operation of that airport by the Port Authority or some other entity. The evidence in the record indicates that all of the benefits from the development of Teterboro would be realized even if the agreement is disapproved, because the Port Authority would then develop the airport. Thus in weighing the public benefits of the Pan Am agreement against the disadvantages, the Board should have attached little or no weight to the alleged benefits.

In other words, not only has the Board failed to satisfy the rigorous "no other means" test established by the Supreme Court in *United States v. Third National Bank of Nashville*, 390 U.S. 171 (1968) (a case considered at some length in our brief but not even mentioned in the answering briefs), but it has erroneously attributed to the agreement benefits that would ensue as surely upon disapproval of the agreement as upon its approval.

A. The Record Is Unmistakably Clear That the Port Authority Will Develop Teterboro if the Pan Am Agreement Is Disapproved.

Pan Am claims that "the Board's duty was to consider the specific agreement before it, not to speculate whether other parties might enter into similar arrangements for accomplishing the same purpose, or whether the Port Authority might do so itself." (Pan Am Br., p. 19). The Board expresses much the same idea in somewhat more colorful language when it claims that it "was not required to wander preliminarily into what might be fanciful byways." (Board's Br., p. 25, fn. 13).¹

There was no need either to speculate or to wander into byways, fanciful or plain, because the record is quite clear that the Port Authority will develop Teterboro if the agreement is disapproved. The Board itself admits that the Port Authority would develop Teterboro in the absence of approval of the agreement. (Board's Br., p. 58). We are convinced that a reading of the testimony of Mr. Wiley, the Port Authority's Director of Aviation, clearly and unmistakably conveys the intention of the Port Authority to develop Teterboro Airport if the agreement is disapproved and to do so to an extent comparable to, although perhaps different in particulars from, the development to be undertaken by Pan Am. Portions of Mr. Wiley's testimony are quoted at pages 50-51 of our opening brief, and extensive excerpts are contained in the Joint Appendix (R. 2235-83).

¹*Northwest Airlines, Inc. v. Civil Aeronautics Board*, 112 U.S. App. D.C. 384, 303 F.2d 395 (1962), cited by the Board in support of this contention, arose under radically different circumstances. That case was an appeal of the Board's approval of the United-Capital merger, which took place under circumstances in which the only likely alternative to approval was the bankruptcy and dismemberment of Capital, with consequences that were almost impossible to predict. Here, however, the record is clear that if the agreement is disapproved the Port Authority will develop Teterboro.

Citizens for Allegan County, Inc. v. Federal Power Commission, C.A.D.C. No. 21,842 (April 29, 1969), also cited by the Board in support of this proposition, is a far cry from this case. The Court there stated:

"We agree that the FPC has an active and independent duty to guard the public interest, and that this may require consideration of alternative courses, other than those suggested by the applicant. [Citing cases] This does not mean that the FPC must always undertake exhausting inquiries, probing for every possible alternative, if no viable alternatives have been suggested by the parties, or suggest themselves to the Agency." (Slip Opinion at p. 13).

We urge the Court to read this testimony, as we are confident that it will thereby be persuaded that our interpretation is the only reasonable one.

Pan Am has sought to create a different impression by lifting out of context a later quotation from Mr. Wiley's testimony. (Pan Am Br., p. 20). In so doing, it has failed to call the Court's attention to further testimony just two pages later in the record, elicited on re-cross examination by counsel for the Board's Bureau of Operating Rights, which reads as follows:

"BY MR. ROSENTHAL:

"Q. Just a second ago Pan Am asked you if there were disapproval of the proposed agreement has the Port Authority made a commitment to develop Teterboro's operational facilities, and I believe you answered that No.

"A. I'm sorry, I read that did we have any *specific plans* for the development of it.² We have said we will go forward with the development of Teterboro if this agreement is disapproved.

* * *

"Q. Mr. Wiley, are you now in this hearing making a commitment by the Port of New York Authority that it definitely will not develop the fixed base operation facilities under general aviation services at Teterboro should the Board disapprove the agreement?

"A. I refer you to Exhibit PNYA-1, page 6, Item II(3) where it says:

'If the agreement between Pan American and the Port Authority is not approved by the Civil Aeronautics Board, the Port Authority itself will continue to operate Teterboro Airport as it has in the past'

"I make no commitment as to the *detailed plans* within which Teterboro would be implemented and improved for the future at this stage of the game other than what is stated in the direct testimony.

"Q. And you make no commitment that the Port Authority will not pursue *any development plan*?

"A. That's right." (R. 2281-82). (Emphasis supplied)

²The reporter apparently failed to transcribe accurately Mr. Wiley's use of pilot's lingo. We believe what Mr. Wiley meant was: "I'm sorry. I understood that question to be 'Did we have any specific plans for the development of it.' We have said we will go forward with the development of Teterboro if this agreement is disapproved."

We believe that the foregoing quotations, together with those set forth on pages 50 and 51 of our opening brief, can be read in only one way. That is, that the Port Authority would go forward with the development of Teterboro if this agreement is disapproved, and, while it would not commit itself to any specific program of action, it would proceed with a development similar to the TAMS proposal.³ With all due respect, we believe that the Board is simply in error if it understood this testimony to mean something different.

B. The Evidence Taken as a Whole Does Not Permit the Conclusion that Pan Am Would Do a Better Job of Developing Teterboro or Do It Sooner Than the Port Authority.

Although it is true, as noted above, that the Port Authority did not commit itself to any *specific* plan of improvement of Teterboro, the simple fact is that Pan Am was equally vague in committing itself to any specific program. Pan Am specifically stated that it "has not adopted (the TAMS proposal) in exact detail or with finality" but that it is merely "descriptive of Pan American's general intention for development" (R. 415), and further that "in *general* Pan American has in mind the same *general* construction program for the first five years of operations of Teterboro Airport" as in the TAMS proposal. (R. 444) (emphasis supplied).

The Board's brief states repeatedly that Pan Am will proceed with a program of developing Teterboro, but either offers no citation to record evidence to support those claims or seems to cite as "evidence" the Board's own findings. The citations in the Board's brief—or the absence of them—are so revealing of the lack of evidentiary support for its claims that we believe it appropriate to quote the passages in the Board's brief dealing with this key question, substituting the true citations for the record references contained in the brief:

"Pan American states that it intends to undertake a substantial construction program aimed at developing Teterboro into a modern, fully equipped general aviation facility. (Examiner's initial decision). . . . In addition, Pan American proposes to commit up to \$25 million within the first five years of its operation of Teterboro to a program along

³The argument which the attorneys for the Port Authority have made at the end of the second paragraph on page 5 of their brief is clearly contrary to the sworn testimony of Mr. Wiley. Obviously the evidence of record must prevail over this argument.

the lines of that suggested by TAMS which projected the construction of a new passenger terminal, new facilities for two fixed base operators, additional hangars, and increased automobile parking facilities [no citation]." (Board's Br., p. 8).

* * *

"In accepting the examiner's general conclusions and approving the agreement, the Board found that Pan American's proposal to invest substantial sums in the development of Teterboro would make a 'contribution toward relieving the congestion' at the jetports and would result in 'a real, direct, immediate and substantial benefit.' [No citation] The Board weighed these anticipated public benefits against the slight potential adverse effects which might flow from Pan American's operations under the agreement and concluded that the agreement was not contrary to the public interest and should be approved [no citation]." (Board's Br., pp. 24-25).

* * *

"... Pan American stands ready to proceed with a substantial development program [no citation]." (Board's Br., p. 26).

These are all the claims which we could find in the Board's brief that seem even remotely to support its argument on this vital point. The Board seeks to work miracles with bootstraps—evidence would be better.

A fair reading of the evidence on this point will inevitably lead to the conclusion that Pan Am may have committed itself in some manner or other to develop Teterboro, but—like the Port Authority—it has not committed itself to any specific program for that development.⁴ Thus, there is simply no evidence in the record to support the claim that Pan Am will offer public benefits which could not be achieved if the agreement were disapproved.

⁴Particularly revealing is the Board's statement—without citation to the record—that "Pan American proposes to commit up to \$25 million" at Teterboro. (Board's Br., p. 8). This claim is an accurate reflection of the extent of Pan Am's commitment for the development of Teterboro, since presumably the investment of as little as \$1,000 would fit within the "up to \$25 million" category.

Since there is no real basis for a claim that Pan Am would do a better or more extensive job of developing Teterboro than the Port Authority, the Board's brief relies heavily on the claim that Pan Am would do it sooner. Here also the Board's decision, as well as the answering briefs, are long on claims and short on evidentiary support. There are no citations to any *evidence* to demonstrate that Pan Am would develop the airport sooner than the Port Authority.

Once again, this can be demonstrated by quoting the Board's brief with the correct record references inserted:

"Faced with Pan American's proposal, the Board had only two realistic choices: Approval, which would mean an immediate start on the desired improvements and an early contribution towards relief of congestion in the New York area; or disapproval, which would mean, at a minimum, substantial delay while the Port Authority prepared plans for its own development of the facility and/or sought another developer. [Port Authority's brief to the examiner]⁵ The seriousness of that delay is not to be minimized. [No citation] At the beginning of this proceeding the Board recognized the gravity of the congestion situation and directed that Pan American's application be processed on an expedited basis. Similarly, the Board reviewed the examiner's decision without briefs and oral argument to avoid further procedural delays. On reconsideration it stated that 'the exigencies of time' continue to require prompt disposition of the case, noting that 'each month of delay of approval will result in a corresponding delay in completion of the improvements.' [Board's Order on Reconsideration] It has been nearly five years since Pan American and the Port Authority began to negotiate and there is every reason to fear that if the Port Authority is forced to seek another developer similar delays will ensue. [No citation] Meanwhile, Pan American stands ready to proceed with a substantial development program." [No citation] (Board's Br., p. 26).

Once again, the Board has fabricated an elaborate superstructure of argument with no *evidence*.

⁵Compare the actual *testimony* of the Port Authority's *witness* (Petitioners' Br., pp. 50-51) with the *arguments* of its *attorney*.

The evidence on this question indicates that it would require two to three years for the Port Authority to *complete* substantial improvements to the terminal operations (R. 2253), whereas the report prepared by Pan Am's consultants indicates that it would take that long or longer for Pan Am to complete its development (R. 1120-22).

It is impossible to emphasize too strongly that the Pan Am agreement has already delayed the development of Teterboro for several important years. The undeniable fact is that three years were wasted from the time that negotiations began in September 1964 until an agreement was finally reached in September 1967. (R. 399-401). Moreover, Pan Am and the Port Authority obviously recognized that interested users of the airport would object and might embroil the project in legal controversies. In view of the leisurely pace of negotiations between Pan Am and the Port Authority, it is grossly unfair to claim urgency as a basis for denial of procedural rights of interested parties or as a basis for approving an agreement otherwise contrary to the public interest, both of which the Board has done.

As noted on page 4 of Pan Am's brief, the agreement does not take effect until the completion of certain runway and taxiway construction which is still in process. Moreover, the agreement provides that it will not take effect until all legal steps necessary to make the Board's approval final have been completed. (R. 625-26). Thus, it is impossible to predict when Pan Am's development plans, whatever they may be, will begin to be implemented. Actually, the development of Teterboro Airport would probably have been speeded up materially if the Board had disapproved the agreement when it decided this case last September. Even now, nearly five years after the start of the Pan Am-Port Authority negotiations, the abandonment of the agreement would probably lead to more rapid development of Teterboro than continuation of the effort to obtain approval.

II

THIS CASE DOES NOT INVOLVE APPLICATION OF
SPECIALIZED ADMINISTRATIVE EXPERTISE INSULAT-
ING THE BOARD'S DETERMINATIONS FROM EFFEC-
TIVE JUDICIAL SCRUTINY

At the outset of its discussion of the antitrust issues raised by the agreement, the Board recognizes its responsibility to evaluate the basic national policies embodied in antitrust doctrines and to apply these policies to a determination of public interest issues raised by the application. (Board's Br., p. 30).⁶ The ensuing discussion in the Board's brief is replete with conclusory language and allusions to findings in the Board's opinion and the examiner's initial decision that, by and large, were not rationally derived from and could not be supported by substantial evidence of record.

However, the Board urges the Court to accept uncritically its superficial and conclusory analysis of the factually and legally complex antitrust issues in this case. Thus, at page 31 of its brief, the Board recites the ultimate findings contained in its opinion and goes on to assert that "In such circumstances, an agency's expert judgment is not subject to reexamination by a court unless it was not arrived at in conformity with legal standards."

What the Board is asking of the Court, in other words, is that it recognize the supposed existence of administrative "expertise" in connection with the issues raised by this proceeding, and that it not intrude upon the Board's domain by examining too closely into the reasons, if any, given in support of the Board's findings and conclusions or into the evidence, if any, upon which such conclusions were or might have been based.

In general, the question of the extent to which a reviewing court should defer to administrative expertise with respect to a particular issue

⁶ Here, as at other points in its brief, the Board garbles what are essentially two distinct ways in which antitrust considerations bear upon the case. Obviously, antitrust considerations are part of the evaluation of the overall public interest issue, as the Board admits. However, in addition, they are not only relevant to but determinative of, the issue of whether the agreement creates a monopoly and thereby restrains competition, in which case the first proviso of Section 408(b) absolutely prohibits the Board from approving it. In the presence of a monopoly and a restraint of competition, which Petitioners believe to be established in this case, the permissive doctrine enunciated in *Northern Natural Gas Co. v. Federal Power Commission*, 399 F.2d 953, 961 (D.C. Cir. 1968), is not applicable, and the Board is not free to ignore antitrust considerations because of countervailing public interest factors.

must be resolved in light of the degree to which that issue is in fact one that the agency is singularly qualified to evaluate. One of the leading students of administrative law, in an authoritative treatise on judicial review, confirms this view and admonishes against blind deference to administrative determinations:

"But the assumption that expertness is relevant can, if mechanically invoked, become ludicrous. Not every agency is envisaged by its legislative creator as expert nor is agency expertise always relevant." JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 577 (1965).

Both with respect to questions of law⁷ and with respect to evidentiary matters,⁸ the courts have a responsibility to exercise a degree of independent judgment in areas where administrative expertness is not singularly relevant.

Here, it should be noted that the Civil Aeronautics Board has extremely limited experience in antitrust matters compared to the federal courts. Accordingly, with all due respect for the Board, we submit that it does not have such a superior degree of expertise and that its determinations of antitrust policy could not be intelligently reviewed by the courts. This is particularly true with respect to the issues raised under the first proviso of Section 408(b), which call for straightforward application of conventional antitrust doctrine unmixed with the sorts of special public interest considerations committed to the Board's special domain by the Federal Aviation Act.

The cases cited in the footnote on page 32 of the Board's brief are illustrations of such a situation. The *American Airlines* case⁹ and the two *United Air Lines* cases¹⁰ were route cases involving the award of certifi-

⁷"There are, as we have noted, considerations which overcome the presumption of administrative competence to decide doubtful issues of law. Is the decision of this matter one drawing upon administrative expertness or experience; is it related in a significant fashion to the web of administrative policy?" JAFFE, *op. cit. supra* at 585.

⁸"The usual court . . . demands, and properly so, that the agency convince the court that its 'putative' expertness is in fact relevant to the finding in question; and even then takes this expertness as but one factor in the agency decision which must run the gauntlet of its common sense." *Id.* at 614-15.

⁹*American Airlines, Inc. v. CAB*, 89 U.S. App. D.C. 365, 192 F.2d 417 (1951).

¹⁰*United Air Lines, Inc. v. CAB*, 371 F.2d 221 (7th Cir. 1967); *United Air Lines, Inc. v. CAB*, 81 U.S. App. D.C. 89, 155 F.2d 169 (1946).

cates of public convenience and necessity pursuant to Section 401 of the Federal Aviation Act. These cases dealt with the quality of service and the economics of scheduled air carrier operations and, as such, fell within the area to which the Board devotes most of its energies. Similarly, the *North Central* case¹¹ involved a merger of two local service carriers that was rejected by the Board because it concluded that the merger would adversely affect the quality of commercial airline service in the midwestern United States. These cases involved areas of national transportation policy in which the Board has unquestioned expertise and, therefore, in which the courts should appropriately limit the scope of their inquiry.

In contrast, this proceeding involves questions relating to the management of airports, the operation of general aviation service businesses, and the sale of executive aircraft—all areas that the Board rarely encounters in its administration of the Federal Aviation Act. The Board has little, if any, special expertise in evaluating these questions,¹² and the Court should recognize that less deference is due the Board's conclusions. This is particularly true in the many instances in this case where it is not demonstrable that the Board's conclusions are reasonably related to the evidence contained in the record.

The principal authority cited by the Board in support of its "expertise" argument is *Pan American World Airways, Inc. v. United States*, 371 U.S. 296, 309-310 (1963). That decision is wholly inapplicable to this situation. The Board asks the Court to refrain from *reexamining* its findings, yet the cited case deals with the issue of the Board's *primary* jurisdiction. This distinction, which the Board neglects to mention in its brief, robs the citation of all applicability here. Indeed, the quoted passage specifically states that the Board's conclusions are "subject of course to judicial review," and rejects only *independent* intrusions by the courts.¹³

¹¹*North Central Airlines, Inc. v. CAB*, 105 U.S. App. D.C. 207, 265 F.2d 581, cert. den., 360 U.S. 903 (1959).

¹²A fact clearly demonstrated by the paucity of its evaluation of the evidence in this case and the unrealistic nature of its findings.

¹³Moreover, that case also dealt with "division of territories or an allocation of routes" in a context where considerations peculiarly related to air transportation and peculiarly within the Board's expertise were at issue.

III

THE BOARD'S BRIEF REFLECTS THE IMPRECISE APPROACH
IT TOOK TO THE ANTITRUST ISSUESA. The Board's Brief Perpetuates the Failure of the
Examiner and the Board to Analyze the Short-
comings of Other Airports in the New York Area
in Determining Whether the Agreement Confers a
Monopoly upon Pan Am.

In our opening brief, we contended that the degree of control over Teterboro Airport itself that is vested in Pan Am by the agreement gives rise to a monopoly within the meaning of the proviso to Section 408(b). (Petitioners' Br., pp. 36-37).¹⁴ Beyond this, we have also contended that Teterboro Airport is so significant by virtue of its facilities and geographical location that it dominates the market, reasonably defined, of airports serving the commercial core of New York City and capable of accommodating high performance general aviation aircraft.¹⁵ (*Id.* at 37-40).

The principal area of dispute resides in the geographical definition of the market and in the evaluation of the question of whether Teterboro Airport is so dominant that its control constitutes monopoly power. It is with respect to this question that the examiner and the Board have utterly failed to make any reasoned analysis of the evidence and to arrive at any conclusions having valid evidentiary support.

The Board's brief (pp. 35-38) distorts our position on the monopoly issue. It asserts that we seek to draw an arbitrary 25 mile radius around New York City in determining the monopoly issue. In fact, however, we

¹⁴The Board seeks to brush off this argument as frivolous (Board's Br., p. 33) on the grounds that one always has a monopoly over one's own property. (The Board apparently overlooked the fact that Teterboro Airport would not legally become Pan Am's property as a result of this agreement. This confusion is understandable, since as a practical matter Pan Am will have nearly unfettered operational control for the next 30 years.) This hardly suffices to answer Petitioners' contention, since one can have a monopoly, and thus violate the antitrust laws, through control of one's own property, if that property has sufficient economic significance in connection with any reasonably defined market and line of commerce.

¹⁵It should be noted that the Board's brief does not quarrel with the line of commerce defined by Petitioners—airports in the New York area capable of accommodating high performance general aviation aircraft—insofar as airports not capable of accommodating such aircraft are excluded. The Court should not define the line of commerce more broadly in this respect.

rely on no arbitrary radius, but on a careful evaluation of practicalities. We contend that, as a matter of economic realities, the geographical locations of those airports and the exceptional inconvenience confronting persons seeking to use those airports on route to or from downtown Manhattan render them ineffective competitors with Teterboro in serving the New York City core area.

Petitioners have certainly met any burden that might reasonably be imposed upon them to come forward with evidence and rational analysis of this issue, whereas the Board has failed in its responsibility to consider the evidence in a reasoned manner, as shown by the following comparison:

Petitioners

1. Petitioners introduced substantial evidence of their own (R. 1412-13, 1415-18, 1431-46, 1450-54, 1460-61, 1633-34, 1636-37, 1668-74, 2567-68, 2612-17); Butler Aviation's Brief to the Examiner evaluated this evidence, as well as the evidence introduced by Pan Am on the subject (R. 438-40, 518-19, 556, 1088-89, 1091, 1156-58), at considerable length (R. 2710-19).

2. In its Petition for Discretionary Review, Butler Aviation pointed out the inadequacy of the examiner's analysis of this issue and cited the Board to the extensive evidence record bearing on the matter (R. 2894-95).

3. In briefing this issue to the Court, Petitioners carefully analyzed the evidence and demonstrated why, in their view, the other airports listed by the examiner in his initial decision are not effectively competitive with Teterboro. (Petitioners' Opening Br., pp. 37-40).

Examiner and Board

1. The examiner's decision devoted over half a page to reciting Pan Am's arguments on this point (R. 2870), but completely ignored the substantial evidence to the contrary and failed to make any analysis of or findings with respect to the conflicting claims. He simply concluded that the "availability" of other airports "indicates there is not a monopoly in Teterboro Airport with respect to service in Manhattan." (R. 2871). By merely citing bits and pieces of evidence supporting a preconceived position and ignoring substantial evidence to the contrary, the examiner failed to live up to the responsibilities imposed by sections 7(c) and 8(b) of the Administrative Procedure Act to analyze relevant evidence and make reasoned findings with relation thereto.

2. The Board's opinion contained a bare conclusion that "we agree with the examiner that approval of the agreement will not result in the creation of a monopoly." (R. 2990).

3. The Board's brief to the Court contains no comparable analysis. Instead, the Board is content to set up straw men (such as the alleged insistence by Petitioners on a 25 mile radius) and to cite statistics regarding total general aviation operations at various airports in

the New York area. Such statistics are meaningless when, as here, they lack any indication of such vital factors as the ultimate surface destination of this traffic. (See Board's Br., pp. 35-38).¹⁶

The real question is whether it is the Board or the Petitioners who have made a meaningful examination of "trade realities." *Crown Zellerbach Corp. v. Federal Trade Commission*, 296 F.2d 800, 811 (9th Cir. 1961), *cert. denied*, 370 U.S. 937 (1962). We submit that the Board has been unrealistic by failing to make any inquiry into whether, as a matter of economic fact, the other airports in the New York area are meaningfully competitive with Teterboro.

Neither the examiner nor the Board, in opinions or on the brief, has presented any cogent reasons why the alternative airports should be considered effective competitors to Teterboro in serving downtown Manhattan. The prime advantage of aviation is speed, and that advantage rapidly evaporates when the traveler is required to waste time in getting to the airport. The general aviation traveler starting his flight at the Westchester County Airport, the Republic Airport, or MacArthur Field, must traverse substantial distances through some of the most heavily congested surface transportation arteries in the world. It is hard to believe that there are many who would prefer to endure these hardships rather than utilizing the vastly more convenient and accessible Teterboro facility, once it is improved.¹⁷

As for the three major air carrier airports serving New York City—Kennedy, LaGuardia, and Newark—minimum landing fees have been raised

¹⁶In evaluating the reasonableness of the Board's reliance on Westchester County Airport, the Court should keep in mind that the airport, while 26 air miles from Times Square (Board's Br., p. 36), is 35 road miles from downtown New York, a more relevant measurement. *Service to White Plains, New York*, CAB Docket 19201, Initial Decision, p. 4 (February 27, 1969).

¹⁷The Board should be well acquainted with the severe impact which distance from the heart of a city has on the use made of an airport because of its experience with the Washington National-Dulles-Friendship situation. Washington National is just across the Potomac River and a few miles distant from the heart of Washington, just as Teterboro is just across the Hudson River, a few miles distant from Manhattan. The Dulles and Friendship Airports are 27 and 34 miles, respectively, from the heart of Washington, while the White Plains Airport, the Republic Airport and MacArthur Field are 26 miles, 29 miles and 40 miles from Manhattan. As a result of this distance factor, the Board has had to institute an investigation into means of relieving

to S25 and operations have been severely restricted during the peak periods. This has already substantially reduced the business and private aircraft movements at these airports. Comparing the last quarter of 1968 to the same period in 1967, business and private aircraft movements decreased 46% at Kennedy, 25% at LaGuardia, and 19% at Newark.¹⁸ With this trend and with the severe pressures that currently exist to limit general aviation activities at LaGuardia, Kennedy, and Newark, it takes no great gift of prophecy to see that general aviation activities at those airports will be severely limited, if not nonexistent, well before thirty years is up.

Finally, the dominance of the position occupied by Teterboro must be considered not just on the basis of Teterboro as it exists today (as the Board would do on page 37 of its brief), but in recognition of the comparative appeal of Teterboro as it will exist if Pan Am puts in even a substantial fraction of the improvements which the Board seems to think it will.

Overall, we are convinced that it is the Board, and not the Petitioners, that has failed to make a meaningful analysis of the monopoly issue "in terms of trade realities" *as they will exist during the next thirty years*. Our repeated efforts to get the Board to look at the issue in terms of meaningful criteria relating to the economic significance of the various airports in the New York area have gone wholly unheeded. Under the circumstances, the Board's contention that the agreement does not create a monopoly within the meaning of the first proviso to Section 408(b) cannot stand.

the congestion at Washington National Airport, while Dulles and Friendship remain virtually unused. *Washington/Baltimore Airport Investigation*, Order E-25319, June 20, 1967. Moreover, the Board has recently authorized a helicopter service in the Washington area to help relieve this situation. *Washington/Baltimore Helicopter Service Investigation*, Order 68-11-71, November 18, 1968, pp. 7-8.

¹⁸Port of New York Authority, Monthly Summary of Airport Activities.

B. The Board's Brief Highlights Its Fundamental Error in Defining the Relevant Geographic Market in Which To Search for Potential Restraints of Competition in the Sale of High-Performance Executive Aircraft.

At the outset of every antitrust case there is a key threshold question which must be decided, namely the appropriate geographic area to be considered in defining the affected market for antitrust purposes. Without an identification of the relevant geographical market area, the Board could not rule intelligently on the substance of Petitioners' claim that the agreement will lead to anti-competitive consequences in the executive aircraft sales business. By the Board's own admission, however, "neither the examiner nor the Board specifically ruled on the question." (Board's Br., p. 41, fn. 30). The failure to make this essential ruling is a fatal defect in the Board's decision and suffices, even if Petitioners' other arguments fail, to require reversal and remand to the Board for further findings. It is a deficiency that cannot be cured by findings made for the first time in the Board's brief.

We contend that the New York City area constitutes the appropriate geographical market to be examined in evaluating the claim that Pan Am's monopoly at Teterboro would restrain competition in the sale of high-performance executive jet aircraft. In its brief, the Board opts for a definition of the relevant market on a national scale. It goes on to assert that "If the appropriate geographical market is national, it is difficult to see how the location of a single facility could have an appreciable effect on sales, let alone how it could result in a 'substantial lessening of competition.'" (Board's Br., p. 41, fn. 30). Accepting *arguendo* the correctness of this conclusion, the Board's position is defective in its complete failure to establish the predicate—that the "appropriate geographic market is national."

It has long been recognized that antitrust doctrine requires a "pragmatic, factual approach" to the process of market definition, both in terms of product and in terms of geography. *Brown Shoe Co. v. United States*, 370 U.S. 294, 336, 82 S.Ct. 1502, 1530 (1962). The Court went on to state in *Brown Shoe*:

"Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area." (370 U.S. at 337, 82 S.Ct. at 1530).

The Board had a duty to inquire into and determine the appropriate market to be considered in this case, and its failure to do so is grounds for reversal.

Even if the Court is willing to overlook the Board's failure to define the relevant market, it is nevertheless clear that the Board is in error in seeking to ignore the local market and to examine only the national market.

In its brief, the Board quotes the dissenting view of Mr. Justice Fortas in *United States v. Grinnell Corp.*, 384 U.S. 563, 587 (1966), to the effect that "it is always possible to so define the relevant line of commerce and the appropriate geographic area to fit the business of the alleged monopolist." (Board's Br., p. 36). Presumably, the Board cites this view as a criticism of the flexible approach to market definition in antitrust cases. However, the view was expressed in a dissenting opinion and precisely reflects the policy that the Supreme Court has determined should be applied in antitrust cases. The Court applies its flexible, pragmatic approach to market definition in order to achieve the purposes of the antitrust statutes and thus protect the public interest. In other words, if there would be a monopoly in any geographic area, or a lessening of competition in any geographic area, the Court will find a violation of the antitrust laws so long as it is a significant area. Any other interpretation would allow local monopolies and local restraints of trade to go unchecked.

This case is a perfect example. If Pan Am's control of Teterboro creates a monopoly and restrains competition in a local area, how could it possibly further the public interest to define the market nationally, as the Board's brief attempts to do, merely in order to relieve Pan Am of the impact of the antitrust laws? Clearly the New York City area constitutes a significant economic market, and the Board should not permit a restraint of competition in such an important market.

We recognize that there is a national market, as well as many local markets, in this line of commerce. It was the national market that was under scrutiny in *Butler Aviation Co. v. Civil Aeronautics Board*, 389 F.2d 517 (2nd Cir. 1968), a case on which the Board places primary reliance. However, it is not the relevant market for purposes of this case, which is focused specifically upon potential anti-competitive consequences in the New York area, and accordingly the cited case is not a controlling precedent here. To the extent the Board's findings and arguments are not

addressed to the characteristics of the local market and the potential impact of the agreement on this market, they are not relevant to the issues of this case.

The primary arguments advanced by the Board in support of concentration of the national market concern the characteristics of the accredited central station service industry (fire and burglar alarms) at issue in *United States v. Grinnell Corp.*, 384 U.S. 563 (1966). The Board makes no effort to show any inherent relationship or analogy between that industry and the sale of high-performance executive aircraft, and, of course, in the absence of any such relationship the facts surrounding the accredited central station service industry can have little bearing on the proper market definition in this case.¹⁹ Moreover, in *Grinnell* the Court concluded that there was a monopoly of the national market. Therefore, there was no need for it to look at local market conditions to dispose of the case, and its discussion of the issue of geographical market definition is dictum of no applicability to the instant case.

IV

THE BOARD'S BRIEF REFLECTS THE UNREALISTIC AND IMPRACTICAL VIEWPOINT ADOPTED IN THE BOARD'S DECISION TOWARD PAN AM'S MOTIVES AND OPPORTUNITIES FOR PREDATORY AND ABUSIVE PRACTICES IN THE OPERATION OF TETERBORO AIRPORT

The briefs of the Board and Pan Am charge us with over-fertile imagination of wrongs that Pan Am would not wish to commit and could not even if it wished to. We, on the other hand, believe that the Board has taken a wholly impractical and short-sighted view of the probable consequences of Pan Am's management of Teterboro. Certainly neither the Board's decision nor its brief responds meaningfully to the concerns we have raised.

¹⁹The Board's brief also seeks to distinguish the present situation from those arising under Section 7 of the Clayton Act on the ground that the business of operating general aviation airports and the business of selling general aviation aircraft "are not related horizontally or vertically in substantial degree to one another or to the air transportation functions which are Pan American's principal occupation." (Board's Br., p. 42). With all due respect, we submit that there is a clear and definite vertical relationship between airports and the sale of executive aircraft and a clear product extension relationship between airports and the airline business. The Board's contrary view merely casts doubt upon the appropriateness of recognizing special Board "expertise" in resolving the antitrust issues presented by the agreement.

A. It Cannot Reasonably Be Concluded That the
Interests of Pan Am, General Aviation, and the
Public Will Always Coincide

We argued at length in our opening brief (pp. 19-30) that there is a substantial conflict of interest between Pan Am and general aviation that could cause improper practices by Pan Am in the operation of Teterboro Airport. The Board's brief did not even attempt to analyze the problems we raised, but merely repeated the argument in the Board's decision that Pan Am will have no incentive to engage in practices detrimental to general aviation because "the interests of Pan American and general aviation, as well as the public interest, are parallel." (Board's Br., p. 49).²⁰

We recognize that in some respects the interests of Pan Am and general aviation will be parallel. Where we part company with the Board is in its refusal to recognize that there will be also many situations *in the next thirty years* in which those interests will not be identical, or even compatible. It is in these areas, where the views of Pan Am are bound to be divergent from certain elements of general aviation, that we have our deep concern. The Board's failure to respond to the specific contentions advanced by Petitioners is most significant:

1. We emphasized the fact that the unusually long duration of the operating agreement, 30 years, makes it extremely difficult to predict the kinds of conflict of interest situations that might arise. (Petitioners' Br., pp. 22, 25-26). The Board's brief does not mention this consideration.

2. We noted that approach and landing patterns at Teterboro Airport could conflict with those at the air carrier airports, and that Pan Am's role as operator of Teterboro would enable it to influence the decision on such a question. (Petitioners' Br., p. 29). The Board has not responded to this contention.

²⁰Here, as on several other occasions, the Board's brief seems to place more stress on what the President of Atlantic Aviation did *not* say in hearings in this case than on the evidence which is actually present in the record. (E.g., Board's Br., p. 49, fn. 38). Therefore, it is important to recognize that Atlantic Aviation will soon need Pan Am's permission for any improvements to its facilities (R. 1584-91) and Pan Am will be able to cancel some of its leases upon thirty days' notice, with or without cause. (R. 2433). Moreover, the examiner did not permit Mr. Richards to present testimony as to his position on Pan Am's take-over of the airport. (R. 2557).

3. We pointed out the vital role that Pan Am as operator of Teterboro would have in resolving conflicts between various segments of general aviation, and the probable bias of Pan Am in favor of that segment which it serves through its Falcon sales operation. (Petitioners' Br., pp. 29-30). Both the Board's opinion and its brief fail to respond to the general problem thus posed, focusing instead on a narrow specific aspect of this question involving potential conflict between student and itinerant operations. (Board's Br., pp. 59-60).

4. We pointed out that one of the potential adverse consequences of the agreement would be to motivate Pan Am to oppose development of competing general aviation facilities in the New York area. (Petitioners' Br., pp. 54-55). The Board's brief did not respond to this argument.

The Board's attempt to dispose of these complex questions on the basis that Teterboro will be developed by Pan Am and that this development will be in the interest of all parties involved does not, accordingly, come to grips with the fundamental issue—*i.e.*, *not whether* Teterboro will or should be developed (see Part I, *supra*) *but how* it will and should be developed. With its far-flung and diverse aviation interests, competitive with or antithetical to those of many segments of general aviation, it is unreasonable to deny the possibility that Pan Am would be motivated to engage in invidious and discriminatory practices in the management of Teterboro Airport.

The only practical consideration advanced by the Board in response to our arguments on this issue is the assertion that Pan Am will have no incentive to engage in practices harmful to general aviation because it would have a large investment and heavy fixed charges as airport operator at Teterboro. (Board's Br., p. 50). However, the Board fails to suggest any reason why Pan Am's investment should cause it to abstain from predatory or discriminatory practices. Ordinarily, a large financial investment combined with monopoly powers creates both incentive and opportunity for such practices.

The Board's argument is like claiming that if the U.S. Steel Company were to acquire all of the other steel companies, it would not be contrary to the public interest because the merged company would have such a large investment and such heavy fixed charges to meet that it would therefore be on its best behavior. The contrary is, of course, likely, since monopoly power provides the economic leverage for predatory practices.

Here, Pan Am's large investment and heavy fixed charges will only serve to increase the pressures to maximize profits by various discriminatory acts and by raising rates, fees and charges to the maximum possible level, reaping the added profits of the monopolist, directly contrary to the best interests of general aviation.

Moreover, the Board's argument is unsupported by any realistic analysis of Pan Am's internal conflict of interest. As operator of an airline with millions of dollars at stake in obtaining air traffic priorities in the New York area, and as seller of millions of dollars worth of corporate jet aircraft, Pan Am unquestionably has conflicting financial interests that suggest it may find profit potential in discriminatory management of Teterboro Airport. Certainly more than the Board's superficial assertions on this subject are needed to provide a reasonable basis for concluding that these conflicts of interest would not adversely affect Pan Am's fair and even-handed discharge of its responsibilities in the management of Teterboro.

B. The Board Is Also Unrealistic and Impractical in Its Trusting Reliance on Certain "Noble Words" in the Agreement as a Protection Against Predatory Practices by Pan Am

In Section I(C)(2) of its brief, the Board deals with the issue of Pan Am's power, as operator of Teterboro, to engage in predatory practices. (Board's Br., pp. 51-57). The Board's arguments, which reflect the stance taken in its opinion, place enormous—we believe excessive—reliance on certain provisions of the agreement and on the Board's retention of jurisdiction over this case. In so doing, we believe the Board failed in its responsibility to look beyond the abstract, theoretical duty of Pan Am to operate Teterboro in a non-discriminatory fashion to the practical, hard-headed realities of the business world.

Throughout this entire proceeding, Petitioners have never questioned that the agreement contains many "noble words." We have, however, urged the Board to look beyond those well-intentioned clauses and to determine what real protection, if any, they give to general aviation. We have repeatedly set forth the reasons why we believe that it will be simple for Pan Am to evade these provisions with relative impunity because of the extent of its powers over the operation of the airport and because of the lack of effective remedial procedures. (Petitioners' Br., pp. 14-19, 45-

49). In our opinion, the Board has never faced up to or attempted to analyze this practical problem.

For example, page 54 of the Board's brief demonstrates its unrealistic approach toward Pan Am's powers to deny or control entry into business at Teterboro. The Board there wholly ignores the fact that:

(1) Pan Am can completely deny anyone an operating franchise at Teterboro, but the agreement makes no provision for Port Authority review of such action;

(2) Pan Am must necessarily "discriminate" in selecting just one person to conduct operations on any specific piece of property. Neither the Port Authority nor anyone else will be able to trace the reasons why Pan Am granted the franchise to one party and denied it to another, in view of the way that such negotiations are conducted. (R. 1406).

We agree with the Board that there are certain kinds of rules which must exist and be enforced if an airport is to operate on a safe and sound basis. However, this is simply another reason why the public interest requires that those rules be enforced by a fair and impartial operator, rather than by an airline whose interests are antithetical in many ways to general aviation. It surely is unreasonable to conclude that "there can be no discrimination in their enforcement." (Board's Br., p. 54). Obviously any "policeman" has wide discretion to enforce or not to enforce particular rules, and Pan Am will necessarily enjoy wide latitude in exercising such discretion to further its own ends. Neither the Port Authority nor anyone else would ever be able to trace or control its actions in this regard, except in the case of the most flagrant and clumsily executed misconduct.

Our primary concern is not with practices which are flagrant and open on their face. We are, however, genuinely concerned with the almost unlimited possibilities for *sub rosa* discriminations and abuses that could never be proved.²¹ The whole history of judicial efforts to curb racial discrimination demonstrates that it is extremely difficult to prove discrimina-

²¹The Board's long description of the Pan Am-New York Airways relationship is a good case in point. (Board's Br., pp. 44-47). Despite all the restrictions the Board placed on that agreement, no other air carrier ever had a support agreement for NYA's operations off the roof of the Pan Am Building. (R. 1466). (Since the Board's brief seems to be laboring under the impression that NYA is currently providing helicopter service at Teterboro (Board's Br., pp. 5, 46-48), we feel it our duty to inform the Court that such service has not been operated since February 15, 1968.)

tion or for all the legal machinery in the world effectively to prevent covert discrimination.²²

While the briefs of the Board, Pan Am and the Port Authority all quote at great length the various provisions designed to prevent discriminatory treatment, they are all significantly silent on one critical point—the remedy available to an aggrieved party when those “noble words” are not scrupulously obeyed. We have repeatedly called the Board’s attention to the fact that, whatever rights these provisions appear on their face to establish for general aviation, there is no practical remedy available to enforce them. (See Petitioners’ Br., pp. 47-48). So far as we can determine, the Board’s only answer to this serious concern is the claim at page 54 of its brief that the Port Authority may terminate the agreement upon thirty days’ notice.²³ It is totally unrealistic to believe that the Port Authority would exercise this right of “massive retaliation” in the kind of situation we are talking about, even if it were able to detect and prove discriminatory actions by Pan Am. The unwieldiness of this remedy actually serves to highlight the total inadequacy of the machinery available to prevent Pan Am from engaging in discriminatory practices.

We leave it to the Court to determine whether the Petitioners are guilty of mere speculation or whether the Board has engaged in a Pollyannaish refusal to look beyond the form of the agreement to the substance of practical business realities.²⁴

²²On page 43 of its brief, the Board admits that Pan Am could use its powers at Teterboro to discriminate in a number of ways. It brushes off these discriminatory powers by saying that they would be in violation of the agreement. However, the Board has repeatedly ignored Pan Am’s demonstrated record of violating the law and engaging in predatory practices of various kinds. (See the cases cited in fn. 8, p. 23 of our opening brief.) Pan Am’s unsavory past history should not be so readily ignored, at a time when life and death powers over general aviation in the New York area are about to be conferred on it.

²³Page 55 of the Board’s brief refers to a clause saving for the *Port Authority* any other rights and remedies it may have, but makes no attempt to state what those remedies might be. At any rate, there is no indication as to any remedies available to general aviation.

²⁴We note that the Board’s brief still does not give any reasons, valid or otherwise, for its refusal to impose a condition that the Port Authority be given the sole power to enact changes in rates, rules and regulations, as well as the power to negotiate, grant, modify, or terminate leases. (See Petitioners’ Br., p. 35). The Board should have made appropriate and adequate findings on this question.

V

**THE BOARD'S BRIEF ADDS NOTHING TO THE EXPLANATION
AS TO WHY AN AIRPORT PAID FOR WITH PUBLIC FUNDS
SHOULD BE TURNED OVER TO PAN AM FOR ITS PRIVATE
PROFIT**

The Board's brief refers to the private operation of Westchester County Airport by a subsidiary of Gulf Oil Corporation and cites an Initial Decision from another Board case (p. 60, fn. 48). In addition to the fact that this does not constitute evidence of record in this case, the total finding in that Initial Decision was as follows:

"Westchester County Airport is operated by the County Airport Corporation, a wholly-owned subsidiary of Gulf Oil Corporation, under a long term lease concession agreement from the County of Westchester."

It is difficult to see how this quotation supports the Board's claim that the arrangement "appears to work satisfactorily." This is the kind of "evidence" and the kind of "reasoning" which led to the finding that approval of the Pan Am agreement would be in the public interest.

VI

**THE BOARD HAS NOT SATISFACTORILY EXPLAINED ITS
REFUSAL TO PERMIT PETITIONERS TO PRESENT FULL
WRITTEN BRIEFS AND/OR ORAL ARGUMENT ON THE
COMPLEX ISSUES OF THIS PROCEEDING**

**A. The Board Did Not Afford Petitioners Their Right To
Have Their Arguments Heard or Received.**

The Board suggests that it met the requirement of Section 1004(a) that it "hear or receive argument" in three ways, none of which, in our judgment, complies with the mandate of the statute:

1. *Briefs to the Examiner.* If briefs to the examiner are an acceptable method of hearing or receiving argument, then Section 1004(a) is a nullity, since the Board could simply say in every case that it would consider the brief previously filed to the examiner. Clearly Congress had something more in mind when it enacted this section. Congress recognized that in cases in which the evidence is heard by an examiner or a single member of the Board it is important that the parties be able to address their arguments directly to the Board, which after all is making the final

decision. Therefore, it utilized statutory language designed to insure that such a right would be preserved.

Moreover, in order to be meaningful, the right to submit argument must encompass not only matters which were presented to the examiner, but also the opportunity to make a full presentation and analysis of the findings of the examiner as they relate to the evidence of the record. The parties are deprived of this important right, and the Board itself is deprived of the assistance given by arguments of the parties, if the Board merely relies on briefs which were submitted to the examiner before he wrote his initial decision.

2. *Petitions for Discretionary Review.* Arguing that petitions for review meet the requirements of Section 1004(a) is like saying that a petition for certiorari is the same thing as a brief to the Supreme Court. Obviously this is not the case. A petition for discretionary review, under the Board's own rules, is not designed to be, and cannot be, a full brief to the Board. Instead, it merely points out those areas of fact, law and discretion which, in the opinions of the parties, require review by the Board.²⁵ It is not, and does not even purport to be, an argument on the merits.²⁶

3. *Petitions for Reconsideration.* Here the Board's argument becomes even more farfetched. Reliance on petitions for reconsideration is tantamount to suggesting to this Court that it could dispense with both briefs to the Court and oral argument in this appeal, and that the full procedural rights of the parties would nevertheless be protected if the loser were permitted to submit a petition for rehearing. We doubt that the Board would agree that such a judicial procedure would be either fair or proper—particularly if it proves to be the loser in the original court decision.

²⁵*Citizens of Allegan County, Inc. v. Federal Power Commission*, C.A.D.C. No. 21,842, April 29, 1969, involved only questions of law, with none of the complex and controversial issues of fact such as are involved here. Since the Court took the unusual step of stating that "our ruling is narrowly confined to the facts and circumstances before us . . ." (slip opinion, p. 2), the case should not be given the broad interpretation the Board would give it in its brief. (Board's Br., pp. 58, 65, 67).

²⁶Nothing in Section 1004(a) limits the right to present argument directly to the Board itself only to those situations where proof is submitted that the arguments that will be presented were not presented to the examiner. The purpose of the statute is to give the party the right to argue his entire case on the merits *directly to the members who will make the final decision*.

Moreover, the Board's brief ignores the fact that, when the Board adopted abbreviated review procedures, it also assured concerned practitioners that anyone feeling "aggrieved by a decision made under the abbreviated procedure" because the Board had decided a "pertinent issue which could reasonably be considered as subject to controversion" could petition the Board for reconsideration. (CAB Reg. No. PR-78, 29 Fed. Reg. 2818, March 20, 1963).²⁷ We interpret that language to mean that a party could secure the opportunity to submit briefs and possibly to present oral argument by filing a petition for reconsideration pointing out that complex and controverted issues are involved. This, of course, is what Petitioners did in this case.

We did *not* interpret PR-78 to lay upon Petitioners the onerous burden of filing a full written brief, which would probably have run to 50 pages²⁸ and have cost thousands of dollars to prepare, in order to assert the rights that the statute guarantees and PR-78 assured us we would have. Accordingly, we were quite disturbed by the suggestion in the Board's order on reconsideration that we should have filed a full brief on the merits in the guise of a petition for reconsideration asking for the rights guaranteed by Section 1004(a) of the Act. Certainly there is not the slightest indication of such extraordinary procedures in PR-78. If the Board had such an unusual procedure in mind when it wrote this preamble—and we doubt that it did—it had an obligation to be far more explicit than it was in order to afford adequate notice to future litigants.²⁹

The Board's brief ignores PR-78 almost entirely, except for one footnote. (Board's Br., p. 66, fn. 55). Frankly, we have difficulty understand-

²⁷The pertinent language of PR-78, portions of which are set forth at pages 58-59 of Petitioners' Opening Brief, is as follows:

"The Board would not employ the abbreviated procedure in such manner as to deprive a party of the right to be heard on any pertinent issue which could reasonably be considered as subject to controversion. In any event, a party may always file a petition for reconsideration if he feels aggrieved by a decision made under the abbreviated procedure."

²⁸The maximum permitted by the Board's Rules of Practice.

²⁹Apparently the Board interprets the sentence in PR-78 quoted in footnote 27, *supra*, dealing with petitions for reconsideration in the same manner that we do, since its brief does not cite this language as imposing a requirement on Petitioners to file petitions for reconsideration containing full written briefs.

ing what the Board is saying in that footnote. Apparently the Board recognizes that this proceeding did involve "pertinent issues" which are "subject to controversion," so that Petitioners had a "right to be heard," but argues that we were heard by the use of the abbreviated discretionary review procedures. This is certainly not what the Board meant when it used the words "right to be heard" in the preamble to PR-78. (See Petitioners' Brief, pp. 58-59). The context of that preamble indicates that the Board was referring to "further briefing and argument" *as distinguished from* the abbreviated procedures which were being adopted. Clearly we have been denied the "right to be heard" in the sense of the right to present "further briefing and argument," to use the Board's own words.

**B. The Board Could Not Lawfully Deny Petitioners
Their Right To Have Their Arguments Heard or
Received.**

In our opening brief, we have asserted in clear and unequivocal terms the claim that Section 1004(a) of the Federal Aviation Act conferred upon us a right to have our arguments on the merits presented in full to the Board, either by briefs, oral argument, or both. It is difficult to tell from the Board's brief whether or not it admits that the right exists in the circumstances of this case. The only discussion of the subject is at page 63 of the Board's brief, where it asserts that Reorganization Plan No. 3 of 1961 (75 Stat. 837, 49 U.S.C. § 1324 Note) authorizes the Board both to delegate the decisional function to a hearing examiner and, if it takes discretionary review, to decide the case utilizing such procedures "as the Board shall by rule prescribe."

It is highly significant that the Board does not contend that the review procedures adopted pursuant to Reorganization Plan No. 3 of 1961 revoke or modify the procedural rights guaranteed by Section 1004(a) of the Act in a case such as this. We believe that this is a recognition by the Board that a reorganization plan is merely designed to effectuate organizational changes and cannot revoke important procedural rights guaranteed by a prior statute. The Reorganization Act of 1949 (5 U.S.C. §§ 901 *et seq.*), pursuant to which Reorganization Plan No. 3 of 1961 was effectuated, provides that:

"A statute enacted . . . before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect

as if the reorganization had not been made . . .” (5 U.S.C. § 907(a))

Thus, a reorganization plan could not lawfully deprive a party of the right to a hearing before the issuance of a certificate of public convenience and necessity under Section 401 of the Federal Aviation Act (49 U.S.C. § 1371) or the approval of a merger under Section 408 (49 U.S.C. § 1378). Why then could a reorganization plan be used to cut off the right to argue directly to the agency when the evidence has been received by a subordinate officer, particularly when a previously enacted statute has made that right an essential element of a fair hearing?

The Reorganization Act of 1949 does permit “the authorization of an officer to delegate any of his functions.” (5 U.S.C. § 903(a)(5)). This provision is merely meant to authorize a board, commission, or officer to delegate to lower ranking officials functions that a statute directs them to perform. It does not permit repeal of a provision such as Section 1004(a), which by its terms requires the Board to review in a specified manner a function already delegated to a lower official—in this case, the delegation to an examiner of the duty to hold hearings and issue initial decision. The obligation to review delegated functions in a specified manner cannot itself be delegated and is therefore not subject to abrogation by a reorganization plan.

Even assuming, *arguendo*, that Reorganization Plan No. 3 of 1961 effectuated a change in Section 1004(a) to the extent of authorizing the delegation or abdication of the Board’s decision-reviewing function in certain cases, it does not follow that the Board was free to take review, render its own decision, but do so under abbreviated procedures that abrogate rights conferred by Section 1004(a). In the instant case, the Board did *not* delegate its decision-making function; instead, it exercised that function itself, but did so in a manner contrary to the requirements of the statute. Since the Reorganization Act of 1949 does not encompass the alteration of statutorily imposed procedural requirements for taking review,³⁰ Reorganization Plan No. 3 of 1961 could not authorize the Board to pursue abbreviated procedures over the objection of any interested party.³¹

³⁰See 5 U.S.C. §§ 903-904.

³¹When Reorganization Plan No. 3 of 1961 was submitted to Congress, the then-chairman of the C.A.B., Mr. Alan Boyd, testified regarding the limited intentions of the Board in seeking the authority contained in the plan. In response to a specific request by Senator Monroney to “enumerate some of those types” of action “that you feel

Finally, in defense of its abbreviated procedures, the Board argues that "it is plain that the Board would have acted well within its discretionary powers if it had declined review altogether." (Board's Brief, p. 65). This is clearly incorrect—unless the Board is saying that it could have successfully deceived the Court by claiming that the petitions did not meet its standards for review, when in fact they did. We do not conceive the Board to be making such an argument.

The Board itself recognized that this was an initial decision which required review, and it did, in fact, review it. It adds nothing to the argument for the Board to claim that it could have abused its discretion and refused to grant review. Since the Board recognized the need for review and did take review, it was required to conduct that review in the manner specified by Section 1004(a) of the Federal Aviation Act.

In conclusion, we would like to make it clear that it is not necessary, in order to uphold Petitioners' argument on this point, to rule that the Board can never decline full-dress review of actions of its employees.³²

would be subject to delegation," Chairman Boyd gave a fairly extensive list of examples. These included such matters as "passing on motions to expedite . . . orders setting cases for hearing . . . rulings on intervention petitions; passing on motions to extend time for petitions for reconsideration . . . passing on whether or not to institute a formal (enforcement) proceeding . . . ruling on motions made prior to hearing for consolidation, expansion of proceedings, or severance . . . applications for changes in service pattern of local service carriers, and helicopter flight patterns; passing on nonstop notices; passing on requests for effective date of nonstop notices earlier than 20 days . . . off-route charter trips . . . free or reduced-rate transportation under section 403(b) . . . rejection of tariffs . . . passing on applications for loan guarantees . . ." None of the examples provided by Chairman Boyd was even remotely similar to the present situation.

The Chairman also assured the Senators that there would be review *by the full Board* wherever necessary for the "establishment of policy in the first instance, rather than having policy established by someone else." Here, vital policy questions were resolved by someone else, *i.e.*, the examiner, and there was no review *by the full Board*. (See *Hearings Before Subcommittees of Senate Committee on Commerce Regarding Reorganization of the Civil Aeronautics Board, Federal Trade Commission, and Federal Maritime Board*, 87th Cong., 1st Sess., at 10-13 (1961)).

³²There is little evidence that the Board's discretionary review procedures have actually accomplished substantial efficiencies in expediting Section 401 and Section 408 hearing matters. In most important cases, in order to avoid the unnecessary delay that the procedures introduce in obtaining a final Board decision, the Board abandons the discretionary review procedures and, immediately following the issuance of an initial decision, issues an order stating that the Board will review the case in its entirety. See, *e.g.*, *Gulf States-Midwest Points Service Investigation*, Order 68-8-62 (August 14, 1968).

Moreover, we are not challenging the Board's right in certain instances to abbreviate its review of an initial decision for limited purposes, such as deciding minor questions, correcting inadvertent errors, and reviewing uncontested matters.³³

However, we do believe that Section 1004(a) and the Board's Rules of Practice, as well as considerations of sound administrative procedure, require that the Board hear or receive argument on the request of a party in a proceeding such as this, where the Board itself recognizes that review is necessary and where there are hotly disputed issues of both fact and law—issues which present novel questions not previously considered by the Board, which involve matters outside the normal experience of the Board's members, and which present areas of conflict between the airline industry, with which the Board is intimately familiar, and general aviation, of which it has little or no knowledge. Even if one accepts the Board's argument that this is a matter "calling for the exercise of judgment"—and we do not accept that argument in view of the clear language of Section 1004(a)—it seems clear that the Board has not exercised sound judgment here, but has abused its discretion.

The Board's final argument on this point raises the proposition that "the exigencies of time" justified it in "dispensing with further proceedings." (R. 3036). Petitioners dealt with that issue in their opening brief (pp. 60-61), and the Board has failed to respond to the arguments there set forth. We would like to add only one further point at this time. As noted earlier, the agreement does not become effective until certain runway and taxiway improvements have been completed. Since these improvements have not been completed even as of this date, there was ample time for the Board to hear or receive argument. In any event, there was clearly ample time for such procedures between the issuance of the

³³The Board has cited various cases to establish the proposition that it may decide matters without exercising its right of review for affording full opportunity for the parties to be heard before the entire Board. (Board's Br., p. 65 and p. 67, fn. 56). To the best of our knowledge, none of these cases specifically focused on the issue of the right of the aggrieved parties to a hearing before the full Board with submission of briefs and oral argument. This is the first proceeding that we are aware of that involves litigation of that specific issue. Moreover, we know of no hotly contested cases comparable to this one where the Board has taken review of the entire merits of the case without both receiving full briefs and hearing oral argument. It might be appropriate for the Board to give the Court some examples of such cases, if they exist.

initial decision on May 10, 1968, and the Board's last decision on December 5, 1968—a period of almost seven months.

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May 26, 1969

APPENDIX

The Reorganization Act of 1949, as amended, 5 U.S.C. §§ 901 *et seq.*, provides in relevant part:

§ 901. Purpose

(a) The President shall from time to time examine the organization of all agencies and shall determine what changes therein are necessary to accomplish the following purposes:

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

§ 902. Definitions

For the purpose of this chapter—

(1) “agency” means—

(A) an Executive agency or part thereof;

(B) an office or officer in the executive branch; and

(C) any and all parts of the government of the District of Columbia other than the courts thereof;

but does not include the General Accounting Office or the Comptroller General of the United States;

(2) "reorganization" means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

(3) "Officer" is not limited by section 2104 of this title.

§ 903. Reorganization plans

(a) When the President, after investigation, finds that—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions;

is necessary to accomplish one or more of the purposes of section 901(a) of this title, he shall prepare a reorganization plan for the making of the reorganizations as to which he has made findings and which he includes in the plan, and transmit the plan (bearing an identification number) to Congress, together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to accomplish one or more of the purposes of section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory

authority for the exercise of the function and the reduction of expenditures (itemized so far as practicable) that it is probable will be brought about by the taking effect of the reorganizations included in the plan.

§ 904. Additional contents of reorganization plans

A reorganization plan transmitted by the President under section 903 of this title—

(1) may change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head; and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and one or more officers of an agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary. The head so provided may be an individual or may be a commission or board with more than one member. In case of such an appointment, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and, if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate, except that, in the case of an officer of the government of the District of Columbia, it may be by the Board of Commissioners or other body or officer of that government designated in the plan;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

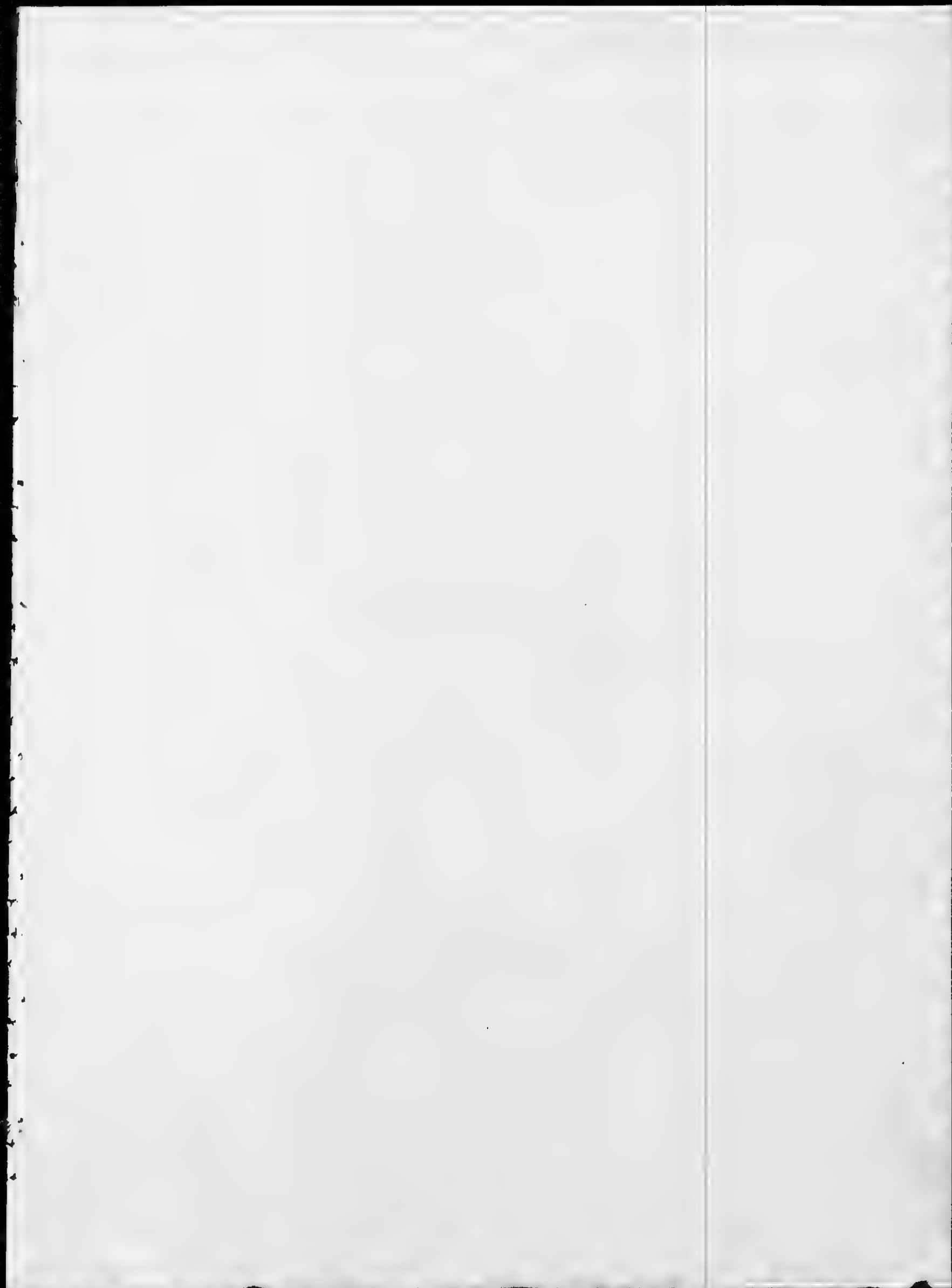
(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective. However, the unex-

pending balances so transferred may be used only for the purposes for which the appropriation was originally made; and

(5) shall provide for terminating the affairs of an agency abolished.

§ 907. Effect on other laws, pending legal proceedings, and unexpended appropriations

(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.





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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,602

NATIONAL AVIATION TRADES ASSOCIATION
and
BUTLER AVIATION COMPANY,

Petitioners,

v.

CIVIL AERONAUTICS BOARD,

Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE
CIVIL AERONAUTICS BOARD

BRIEF FOR RESPONDENT

COUNTERSTATEMENT OF ISSUES PRESENTED

1. Whether the Board abused its discretion in finding that the public benefits flowing from approval of the agreement between the Port Authority and Pan American for the operation of Teterboro Airport, particularly through the reduction of congestion at the New York jetports, outweighed the asserted disadvantages arising through the alleged restraints on competition and conflicts of interest projected by petitioners?
2. Whether the Board properly found that Pan American's proposal to rapidly develop Teterboro into a modern, fully equipped general aviation

facility would make a substantial contribution towards lessening the congestion at the jetports and thereby redound to the public benefit?

3. Whether the Board properly found that the agreement would not give Pan American a monopoly of general aviation airports in the New York area?

4. Whether the Board properly found that the agreement would not enable Pan American to restrain competition in the sale of executive jet aircraft?

5. Whether the Board properly found that the agreement would not enable Pan American to restrain competition in the transportation of air passengers from Teterboro to the jetports?

6. Whether the Board properly found that the interests of Pan American and general aviation do not conflict with respect to this agreement since the best interests of each lie in the rapid and full development of the airport along the lines envisioned by Pan American?

7. Whether the Board properly found that operation of the airport by a private party would not be contrary to the public interest?

8. Whether the Board properly found that the provisions of the agreement and their enforcement by the Port Authority and the FAA, and the Board's retention of jurisdiction over the agreement, will be sufficient to prevent Pan American from abusing its position as operator of Teterboro to the detriment of general aviation or the public?

9. Whether the Board erred in reviewing the examiner's initial decision without providing for the submission of briefs or oral argument?

The present case has not previously been before this Court.

COUNTERSTATEMENT OF THE CASE

This case involves the operation of Teterboro Airport, a large general aviation facility in Northern New Jersey, roughly eight miles west of Times Square. By Orders 68-9-120 and 68-12-25 the Civil Aeronautics Board approved, subject to certain modifications and conditions, an agreement whereby the Port of New York Authority, owner and present operator of Teterboro Airport, will turn over operation of the airport to Pan American World Airways, Inc. for a period of thirty years. The agreement provides that the facility is to continue in use as a general aviation airport and that it is to be operated in a fair, reasonable and non-discriminatory manner. The Board retained jurisdiction to impose further conditions on Pan American's operations under the agreement if the need arises. The Butler Aviation Company and the National Aviation Trades Associations (NATA), which as parties to the proceedings before the Board urged that the agreement not be approved, now seek review and reversal of the Board's orders.

The Parties

Pan American is an air carrier holding certificates of public convenience and necessity from the Civil Aeronautics Board, and it is also the U.S. distributor of the Fan Jet Falcon, an "executive" jet aircraft manufactured in France. (R. 461-64).

The Port of New York Authority is an interstate compact agency organized under the authority of the states of New York and New Jersey and entrusted with responsibility in matters affecting commerce in the Port of New York District (R. 225). In addition to Teterboro, it owns and operates the three so-called jetports, Newark, LaGuardia, and Kennedy.

Butler is a "fixed base operator," performing a wide range of activities connected with aviation including the sale, repair and maintenance of aircraft; the sale of fuel and its delivery into aircraft; the installation of avionics equipment in aircraft; the provision of aircraft parking and hangar space; and the performance of turn-around services for transient aircraft, such as the provision of portable stairs. Butler has bases at twelve airports in the United States, including LaGuardia, and describes itself as one of the nation's largest fixed base operators (R. 1405).

NATA is a trade association representing the general aviation service industry as distinct from the air transportation and/or the aircraft manufacturing industries. Butler is among its members (R. 189-90).

The Airport and the Agreement

Teterboro is one of six airports within forty miles of Times Square which is presently fully equipped--with paved runways of sufficient length, an instrument landing system, a control tower, and so forth--to properly accommodate high performance aircraft such as the Falcon and other executive jets. (The other airports are Kennedy, LaGuardia, Newark, Westchester County at White Plains, and MacArthur at Islip on Long Island). Each of these is presently handling a large volume of general aviation (i.e., non-airline) traffic. In addition, there are more than ten smaller airports within the same area, some of which also handle a substantial number of general aviation operations and there are programs in various phases of implementation to upgrade three of these to the general level of Teterboro. (R. 518-19, 2870-71).

Teterboro Airport, because of its proximity to Manhattan and because of the excellent surface and helicopter transportation which is available at Teterboro, is especially well situated to accommodate a substantial increase in the volume of its general aviation activities. Moreover, the congestion at the three jetports, with its resultant air and ground delays, is a serious problem and the development of Teterboro so as to attract additional general aviation traffic to it offers one of the best prospects for making a substantial and immediate contribution to the alleviation of that congestion. (R. 419-21, 1402, 1853-56).^{1/}

In September 1964, Pan American and the Port Authority commenced negotiations looking to some form of participation by the former in the development of Teterboro. During the course of these negotiations Pan American retained the architectural firm of Tippetts-Abbett-McCarthy-Stratton (TAMS) to make recommendations for the development of Teterboro into the modern general aviation facility desired. TAMS projected a development program requiring the expenditure of over \$22 million for a new passenger terminal, new facilities for two fixed base operators, additional hangars, and an increased number of automobile parking spaces. (R. 2846-49).

Although a number of possible arrangements were explored, on September 19, 1967, the parties agreed to the substitution of Pan

^{1/} As the Department of Transportation said: "The major New York Airports . . . are among the busiest and most congested airports in the United States If a substantial number of the general aviation operations which would normally use Kennedy, LaGuardia or Newark were to use Teterboro . . . instead, there would be a reduction in demand at the three major airports and, correspondingly, a reduction in delay." (R. 1776-77).

American for the Port Authority as operator of the airport for a thirty year period. Under the agreement (R. 127-74), Pan American is to pay the Port Authority a fixed annual fee plus a percentage of all revenues in excess of an agreed-upon minimum^{2/} and Pan American is to relieve the Port Authority of any obligation under its existing agreements with airport users and is to assume full responsibility for the repair and maintenance of the airport. In exchange, Pan American will receive all rentals, fees and other revenues from the airport's operation.

The agreement provides in §§ 2 and 26 that Pan American will operate Teterboro as a public general aviation airport^{3/} and that it will furnish all airport services on a fair, equal and not unjustly discriminatory basis and that it will make only fair, reasonable and not unjustly discriminatory charges. The agreement also includes a number of specific provisions which retain for the Port Authority a substantial degree of control over Pan American's activities. Thus, in the matter of user charges, such as landing fees, the carrier is prohibited by §35 from setting its rate schedule at a level exceeding the rates prevailing at the three Port Authority jetports without the Port Authority's approval.^{4/} Section 7 incorporates rules and regulations to govern the

^{2/} The fixed fee is \$320,000 the first year, increasing to \$664,640 for each of the last twenty-five years. The percentage fee is 10% of all revenues in excess of \$5 million annually.

^{3/} Scheduled helicopter operations within the metropolitan area are permitted.

^{4/} As a condition to its approval of the agreement, the Board has further restricted Pan American's discretion in setting rates by imposing
(footnote continued)

conduct of airport users as promulgated by the Port Authority and provides for their amendment by the Port Authority, with Pan American's consent. The carrier is permitted only to make such additional rules as may be consistent with those promulgated by the Port Authority. Pan American is also prohibited by §10 from entering into agreements for the use or occupancy of parts of the airport (such as a lease of facilities to a fixed base operator) without the consent of the Port Authority. Finally, the Port Authority's right of entry onto the airport to observe Pan American's performance under the agreement (§14) and its right to terminate the agreement should the carrier fail to fulfill its obligations thereunder (§15) are preserved.

An amendment to the agreement precludes Pan American from becoming a fixed base operator at Teterboro. (R. 2845). In addition, §2 of the agreement requires that Pan American comply with all applicable laws, while §40 requires the carrier to comply with the Port Authority's obligations to the Federal Aviation Administration under the Federal Grant Agreement of January 2, 1968. The relevant provision of §308(a) of the Federal Aviation Act (49 U.S.C. 1349(a); infra, p. 70) proscribes any "exclusive right" for the use of a federally assisted airport and §11(1) of the Federal Airport Act (49 U.S.C. 1110(1), infra, p. 78) requires

the level of charges existing at the jetports on September 19, 1967, the date of the Teterboro agreement, as a ceiling on the rates which Pan American could adopt without the consent of the Port Authority. On Reconsideration the Board modified this condition so as to include an escalator clause for upward adjustment of the rate ceiling to allow for increased costs of operation as reflected in the Department of Commerce "Implicit Price Deflator for Gross National Product."

that the airport "be available for public use on fair and reasonable terms and without unjust discrimination." The Federal Grant Agreement further prohibits discrimination and the award of rights for the exclusive use of the airport. (R. 252-60).

Pan American states that it intends to undertake a substantial construction program aimed at developing Teterboro into a modern, fully equipped general aviation facility (R. 2848-49). The first phase, nearing completion under the auspices of the Port Authority but to be paid for by Pan American upon final approval of the agreement, called for extension and widening of the two principal runways. In addition, Pan American proposes to commit up to \$25 million within the first five years of its operation of Teterboro to a program along the lines of that suggested by TAMS which projected the construction of a new passenger terminal, new facilities for two fixed base operators, additional hangars, and increased automobile parking facilities.

For its part, the Port Authority urged approval of the agreement as "the best and quickest way to full development of the Airport" and that such development "will result in diversion of general aviation traffic to Teterboro" and thus relieve congestion. (R. 2824-25).

Pan American stated that the contemplated development "would redound to the benefit of all scheduled carriers at the major jetports, and would benefit the public at large, by reducing traffic delays and congestion below what they would otherwise be." (R. 420-21). Moreover, it said that it entered the agreement "for sound business reasons; and

with the expectation of reasonable long range financial returns to Pan American and its stockholders." (R. 422).

The Administrative Proceedings

Section 408(a)(3) of the Federal Aviation Act (49 U.S.C. 1378, infra, p. 70) makes it unlawful "For any air carrier . . . to . . . contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics." Section 408(b) provides, in material part, that any person may make application to the Board for approval of an operating contract otherwise prohibited by §408(a) and directs the Board to grant its approval, "upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe," unless it finds that the operating contract "will not be consistent with the public interest." Approval confers such immunity from the antitrust laws as is provided under §414 (49 U.S.C. 1384, infra, p. 73), but no operating contract may be approved which "would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the . . . operating contract."

Pursuant to §408(b), Pan American submitted the agreement to the Board for its approval. (R. 122-26). Butler and NATA filed answers in opposition: (R. 177-96). The Board set the matter for expedited processing. Taking note of the "difficult problems of congestion" at the three jetports and of the fact that an agreement which contemplates the expansion of facilities at an outlying airport has "a potential for relieving the congestion," the Board said:

"There is thus a substantial public interest in resolving the issues presented as speedily as possible. To this end, we are directing that this proceeding be set down for hearing promptly, and that it be expedited by the hearing examiner at all stages of the proceeding, consistent with due process to all interested persons." (R. 213).

The Port Authority, Butler, NATA, and the Aircraft Owners and Pilots Association were granted leave to intervene.

After a prehearing conference and the exchange of exhibits and written testimony, five days of hearings were held and briefs were submitted to the examiner. Pan American and the Port Authority urged that the agreement be approved. The Board's Bureau of Operating Rights recommended approval subject to a condition no longer material.^{5/}

Butler and NATA opposed the agreement on the ground that there is a serious and continuing conflict between general aviation and the airlines over the allocation to each of a share of the available airspace and ground facilities and that it would be contrary to the public interest to allow an air carrier to gain control of an important general aviation facility. More specifically, Butler believed that the agreement will give Pan American a monopoly and will result in a substantial lessening of competition in four significant lines of commerce.^{6/} Moreover, it asserted

^{5/} The Bureau proposed that the agreement be restricted to ten years. Pan American stated that it could not justify the large investment it intended to make if the agreement were so restricted and the examiner declined to impose such a condition.

The Aircraft Owners and Pilots Association urged that the agreement be restricted to the land necessary for the improvements, rather than the whole airport. The examiner also refused to impose this condition.

^{6/} (1) Airports which are available exclusively for general aviation and which will accommodate high performance aircraft, (2) the sale of high
(footnote continued)

that no private party should have the power to set rates and control access at a public facility developed, in part, with public money. For the most part, NATA's position was similar. (R. 2676-2763).

The Department of Transportation, although not a formal party to the proceeding, submitted a statement supporting the agreement. It said, in part:

"The Department believes that Pan American's undertaking to operate [this airport] for 30 years, and its proposal to invest substantial amounts of money in [its] improvement, will lead to significant reductions in the existing and forecast congestion at the major New York airports." (R. 1781).

In his initial decision the examiner approved, subject to conditions, the agreement between Pan American and the Port Authority relating to the operation of Teterboro Airport. (R. 2844-82). ^{7/} He found that the circumstances surrounding Pan American's proposed operation of Teterboro were such that approval of the agreement would be most decidedly in the public interest. He surveyed the critical problem of air traffic congestion in the New York area and found it to be increasing at an alarming rate, particularly on the general aviation side. Moreover, in several studies highlighting the problem, he found a recurrent call for improved general aviation facilities. Accordingly, he found that a partial solution lies in "the development of reliever airports which will serve to absorb some of

performance aircraft, (3) the transportation of general aviation passengers from Teterboro connecting to airline flights, and (4) the general aviation service business.

^{7/} At the same time, he rejected another agreement submitted by Pan American under which the carrier would have become the operator of the Republic Aviation Airport on Long Island near Farmingdale, New York.

the pressure of growing numbers of general aviation flights in the New York area." (R. 2867). Teterboro is such an airport and the examiner concluded that Pan American's proposal to spend substantial sums to develop the facility into an attractive, fully equipped general aviation airport could be expected to make a measurable contribution towards relief of congestion and would thus clearly result in real and immediate public benefits.

Against these public benefits, the examiner weighed the alleged disadvantages which might flow from Pan American's control of Teterboro. He found that it would not create a monopoly or result in any substantial restraint of competition in any of the lines of commerce put forward by Butler. Moreover, he found that the putative conflict of interest between Pan American the air carrier and Pan American the airport operator was more apparent than real--any theoretical conflict based on the competing demands of scheduled and general aviation for limited airspace would be largely mitigated, in the circumstances of this case, by the carrier's self-interest in managing its substantial investment at Teterboro so as to earn, as airport operator, a reasonable return for its stockholders. Moreover, development of Teterboro would redound both to the benefit of general aviation by improving the facilities available for its use and to the benefit of air carriers by mitigating congestion at the jetports. In addition, the conditions imposed requiring operations to be conducted in a fair and nondiscriminatory manner and the Board's retention of jurisdiction would further insure that Pan American's activities would not be harmful to general aviation. The

examiner also rejected the argument that a public airport, developed in part with public funds, can be operated only by an agency of government.

In sum, the examiner found that, although there might be certain minimal disadvantages stemming from Pan American's operation of Teterboro, those disadvantages were far outweighed by the positive public benefits which would flow from the rapid development of that facility which Pan American proposed to undertake.

"[T]he need for immediate action to develop reliever airports in the New York area as soon as possible is recognized by all. While the Port Authority will continue to operate Teterboro, there is no assurance that it will improve it as Pan American plans to do. Even if it should, or could get some other person to do so, a substantial time to make plans and get started would be required. Pan American is prepared to go forward as soon as the Board's approval is forthcoming. Considering the urgency of the need and the fact that the contract contains provisions requiring service on a fair, equal, and not unjustly discriminatory basis to all users, and fair, reasonable, and not unjustly discriminatory prices for each unit or service, it is concluded that the benefits are far greater than the anticompetitive effects and that approval is in the public interest," (R. 2877-78).^{8/}

Butler and NATA, among others, sought review of the examiner's decision approving the Teterboro agreement.^{9/} Pan American filed an answer opposing review.

^{8/} The examiner conditioned the Board's approval of the agreement on its retention of jurisdiction to impose further conditions if necessary.

In contrast, he found that, because Pan American had no plans for the development of the Republic Aviation Airport, no substantial public benefit would flow from its operation of that field. Accordingly, he concluded that no further concentration of control of New York area airports in Pan American's hands was justified. (R. 2878-79). No party sought review of this aspect of the initial decision.

^{9/} The Bureau of Operating Rights and the Aircraft Owners and Pilots Association also sought review, each requesting imposition of the condition
(footnote continued)

The Board granted review of the examiner's initial decision with respect to Teterboro and, in accordance with its Rule 28(d) (14 C.F.R. 302.28(d), infra, p. 75), did so without further proceedings. After its own extensive analysis of the issues, the Board affirmed the examiner's basic conclusion that the agreement was not contrary to the public interest and should be affirmed. In its unanimous opinion and order, 68-9-120, issued September 25, 1968, the Board adopted those findings and conclusions of the examiner not inconsistent with its own. (R. 2977).

The Board re-evaluated the congestion problem and found that it is critical and "that the development of Teterboro Airport will serve to attract general aviation away from [the jetports], and accordingly, will contribute toward the relief of such congestion." (R. 2978). Moreover, the Board found that the situation called for immediate action. Accordingly, it, too, concluded that approval of the agreement would result in substantial public benefits.

Turning its attention to the opposition to the agreement, the Board agreed with the examiner that it would not result in a monopoly or any substantial restraint of competition. Like the examiner, the Board was unable to find substantial conflict of interest between Pan American's interests as an air carrier and its responsibility as an airport operator. The Board was also unpersuaded by the argument that the airport should not be operated by a private party. Finally, the Board concluded that

which it had urged the examiner to impose. See note 5, supra. The Board declined to impose either condition. (R. 2883-89, 2993).

the supervisory powers which would be exercised over Pan American's activities by the Port Authority, the Federal Aviation Administration, and the Board would be ample to protect the public interest should unforeseen problems develop.^{10/}

Thereafter, Butler and NATA filed petitions for reconsideration because of the Board's failure to call for briefs or oral argument before reaching a decision on the petitions for review of the examiner's initial decision. They argued that the case was too complex and important to be decided without "full dress" review and that the case includes "the sort of issues that typically require months or years of intensive work by the courts when they are raised in other industries." (R. 3000). Pan American and the Port Authority each filed answers opposing these petitions. (R. 3019-30).

The Board denied the petitions filed by Butler and NATA, concluding that they had "shown neither procedural nor substantive error in the Board's failure to provide for submission of briefs or oral argument in its decision on review" (R. 3034). The Board observed that it was vested with discretion as to whether to receive further briefs and argument on review and that Butler and NATA had failed to show that they were deprived of a hearing on any issue. Indeed, said the Board, the parties were presented with, and took advantage of, ample opportunity to develop the

^{10/} The Board declined to impose seven conditions put forth by NATA as an alternative to disapproval of the agreement. (R. 2918-19). Some of the conditions would have left authority over rates, rules, etc. solely in the Port Authority and others were found by the Board to be duplicative of existing provisions in the agreement. The Board found no necessity for imposition of any of the conditions. (R. 2993-94).

record and advance their arguments. Butler alone filed a 72 page brief on the merits with the examiner and its twenty page petition for review contained argument on the merits under nine separate points. Moreover, their petitions for reconsideration urged no specific errors or findings thought to be erroneous, suggesting therefore that further proceedings would be no more than a rehash of the arguments and issues already thoroughly considered. Finally, the Board noted that the exigencies of time continued to require that the proceedings be handled on an expedited basis without further procedural delay.

SUMMARY OF ARGUMENT

I

Section 408 of the Federal Aviation Act requires the Board to approve agreements, such as the one between Pan American and the Port Authority relating to the operation of Teterboro Airport, unless it affirmatively finds that the agreement is contrary to the public interest or barred because it creates a monopoly which will result in a restraint of competition or jeopardy to an air carrier not a party to the agreement. The Board considered all of the issues which are raised by the application of the statute to the facts of this case and concluded that the public benefits which will flow from Pan American's operation of Teterboro outweigh the possible adverse effects envisioned by petitioners and, therefore, approved the agreement.

Although petitioners challenge the Board's orders they do not contest the statutory power of the Board to enter an order approving the

agreement, nor do they contest the Board's authority to weigh the various public interest aspects of the transaction and to approve it on a finding that the good outweighs the bad. Rather, Butler and NATA contest the Board's interpretation of the facts of this case and its application of the controlling legal principles to those facts.

The Board correctly determined, however, that the congestion of airspace and ground facilities in the New York area has become a serious problem and that steps must be taken to alleviate the situation. The early and further development of Teterboro, because it will help to relieve congestion, is in the public interest and the Board so found. Petitioners do not contest the Board's conclusions in this regard, but argue only that the Port Authority or "someone else" would be a better developer than Pan American. Nonetheless, the Board also found that the congestion problem is critical, that immediate steps must be taken, and that Pan American alone is prepared to proceed at once to development of the facility. Any alternative course would result in substantial delay. Accordingly, the Board correctly found that Pan American's proposal was in the public interest.

Notwithstanding the clear public benefits which will flow from implementation of the agreement, petitioners further contend that it must be disapproved because it will have side effects detrimental to the public interest, viz., that it will create a monopoly and allow Pan American to restrain competition in several lines of commerce; that it will allow Pan American, whose interests as an air carrier are allegedly in direct conflict with the interests of the general aviation community,

to use its power as the operator of Teterboro to the detriment of general aviation; that it is contrary to the public interest to allow a private party to operate a public facility such as Teterboro for profit; and, finally, that its position as operator of the airport will enable Pan American to curb effective advocacy of the general aviation viewpoint. The examiner and the Board considered these arguments and found that petitioners' fears are unwarranted and that, on balance, approval of the agreement was in the public interest.

In fact, the agreement does not create a monopoly either with respect to Teterboro Airport itself or, in broader terms, with respect to general aviation airports in the New York area capable of accommodating high performance aircraft. The record shows, as the examiner found, that there are a number of additional airports in the metropolitan area that are capable of handling, and which do in fact handle, large volumes of such traffic. Moreover, Pan American's position at Teterboro will not enable it to control prices or to restrict entry. It follows that there is no monopoly. In addition, the operating agreement, which will be enforced by the Port Authority, the Federal Aviation Administration, and the Board, prohibits Pan American from discriminating in any manner which might enable it to restrain competition as, e.g., by giving preferences to its customers or by refusing access to the airport to competitors. These provisions will prevent Pan American from using its position at Teterboro to restrain competition in any line of commerce. In any event, it is scarcely likely that the location of Pan American's demonstrator aircraft at Teterboro will have any effect on Pan American's sales of business jets,

let alone allow it to substantially lessen competition, since the market for such aircraft is national in scope and highly competitive. Similarly, the agreement will have no effect on helicopter and air taxi operations in the metropolitan area and will not enable Pan American to restrain competition in the transportation of connecting passengers.

The harm which petitioners foresee from Pan American's operations under the agreement by virtue of an alleged conflict between Pan American's interests as an air carrier and the interests of general aviation are illusory. It is as much in the interest of Pan American the air carrier, as it is in the interest of general aviation, to develop Teterboro into an attractive general aviation facility, because such development will reduce congestion at the jetports to the advantage of Pan American's airline operations. In addition, the substantial sum which Pan American will invest in the airport and the large fixed fees it will pay to the Port Authority insure that it will encourage the widest possible use of the facility. Again, the restrictions on Pan American's actions by the terms of the agreement and by the conditions imposed by the Board in approving the agreement are such that it is not in a position realistically to adversely affect general aviation through its operation of Teterboro.

Petitioners' further arguments are equally without merit. Their contention that the airport should only be operated by a public agency is particularly unconvincing in light of the determination by the two public agencies most directly involved with the provision of adequate airport facilities in the New York area--the Port Authority and the Department of Transportation--that Pan American's proposed investment in and operation

of Teterboro is in the public interest. Further, the so-called private operation is belied by the continuing supervision of the Port Authority, the FAA, and the Board. Apart from this, similar public facilities, including another airport in the New York area, are operated by private corporations. Finally, their argument that Pan American will be able to coerce general aviation into silence in the dispute over the limited airspace available in the New York area is hardly credible. There is not the slightest evidence that the carrier's position would enable it to quell dissent or that it has any inclination to do so. Certainly the power of supervision retained by the Board is sufficient to cope with any problem which might arise.

II

Petitioners also argue that the Board committed procedural error in reviewing the examiner's initial decision without receiving further briefs or hearing oral argument. Their claim is without merit. The relevant statutory provision and the Board's regulations permit the Board, not only to review an examiner's decision without further briefs or arguments, but also, in its discretion, to decline review altogether. Moreover, an examination of the Board's opinion reveals that in this case it did not abuse its discretion in using the expedited review procedure. The fact that this case raised important issues does not negative the facts that the substantial record before the Board included, in addition to petitioners' testimony and exhibits, petitioners' briefs to the examiner with arguments on each of the substantive issues which they raise here and that the Board considered the positions of the parties on

those issues from these sources as well as their petitions for review. Furthermore, petitioners filed petitions for reconsideration. Plainly, the Board adequately received argument from the petitioners and committed no procedural error.

ARGUMENT

Introduction

The principal thrust of petitioners' argumentation is, first, that the Port Authority should have continued to operate Teterboro, and, second, that in any event Pan American should not have been selected as the operator because of its airline activities. They seem to contend as strongly on the first issue as the second. However, the first proposition was not in issue before the Board since the Board has no supervisory responsibility with respect to the Port Authority. Indeed, the Board obtained jurisdiction only because the Port Authority chose an air carrier to operate Teterboro. With respect to the second contention, the Board carefully considered the arguments advanced by petitioners and found that any possible adverse side effects stemming from Pan American's operation of Teterboro would be outweighed by the benefits which would flow from the carrier's rapid development of the airport. In addition, the Board found that the conditions contained in the agreement and those imposed by the Board in approving the transaction, as well as the Board's retention of jurisdiction over Pan American's operations under the agreement so as to enable it to impose further conditions should the need arise, would prevent Pan American from using its position in a manner conflicting with the

public interest, and, therefore, approved the agreement.^{11/}

- I. The Board did not abuse its discretion in finding that the positive public benefits which will flow from the agreement between Pan American and the Port Authority outweigh such disadvantages as its approval might entail. Accordingly, the Board's decision in approving the agreement must be affirmed.

Under §408 the Board must ordinarily approve the type of agreement involved herein except in those few cases where it can make affirmative findings that the agreement is contrary to the public interest or that it will create a monopoly and thereby restrain competition or jeopardize another air carrier.^{12/} In reaching a conclusion as to whether a transaction is contrary to the public interest the Board has considered the statement of policy set forth in §102 of the Act (49 U.S.C. 1302, infra, p.69) as declarative of the sort of matters which it must consider and, in addition, the Board must look to the policies which underlie the anti-trust laws. Even if a transaction is not barred by §408, the Board must determine whether it will have serious anticompetitive effects and, if so, whether such disadvantages are outweighed by other public interest considerations.

^{11/} This is the second time that Butler has instituted proceedings to review orders of the Board approving an air carrier's attempt to extend its activities into a field related to air transportation. On the prior occasion, Butler Aviation Co. v. Civil Aeronautics Board, 389 F.2d 517 (C.A. 2, 1968), the Second Circuit rejected Butler's position and affirmed the Board's decision.

^{12/} "The negative in which this provision is cast is to be noted. It is the reverse of the findings requisite for certificates or suspensions . . ." Northwest Airlines, Inc. v. Civil Aeronautics Board, 112 U.S. App. D.C. 384, 303 F.2d 395, 400 (1962). Accord, North Central Airlines, Inc. v. Civil Aeronautics Board, 105 U.S. App. D.C. 207, 265 F.2d 581, cert. denied, 360 U.S. 903 (1959).

In the sections below we show that the Board was warranted in finding that substantial public benefits will flow from implementation of the agreement and that those benefits outweigh any probable adverse effects.

A. The Board properly found that substantial public benefits will flow from implementation of the Teterboro agreement.

The affirmative case for approval of the agreement need not be stated at length since there is no contention here that the Board improperly concluded that the rapid development of Teterboro Airport is in the public interest. Nevertheless, a brief examination of the Board's findings serves to place petitioners' arguments in proper perspective.

When the Board decided to proceed to hearing on Pan American's application for approval of the Teterboro agreement it took "note of the difficult problems of congestion that currently exist at the major airline airports serving the New York metropolitan area" and it tentatively found that Pan American's proposal contemplated "the expansion of facilities at outlying airports and thus [had] a potential for relieving congestion at the major airports." (R. 213). The Board's tentative conclusion was amply borne out by the record developed in the proceeding.

In his initial decision the examiner noted the continuing build-up of air traffic in the New York area, both as measured by the number of passengers and by the number of aircraft operations, and he found that the vast majority of aircraft movements involve general aviation. (R. 2862-64). The examiner observed that the increase in demand beyond current and forecast capacity is leading to operational delays of growing frequency

and greater length. (R. 2863-64). Indeed, the flight delays of several hours experienced in New York during the peak travel periods last summer are familiar to the air traveler. The Board adopted the examiner's findings with regard to the seriousness of the situation, noting that the "critical problem of congestion . . . is detailed in the initial decision, and needs no further elaboration." (R. 2978). The examiner then went on to find that the urgency of the situation calls for immediate action and that one source through which the problem might be alleviated is the development of "reliever" airports, devoted to general aviation and capable of attracting that traffic from the jetports. His conclusion is in accord with the findings of the several government agencies having principal responsibility for the development of aviation facilities in the New York area. (R. 1171-74, 1180, 1776-81, 2824-25). Finally, the examiner concluded that Teterboro Airport is ideally situated as a reliever airport and that, if properly developed as a modern, fully equipped general aviation facility, it can make a substantial contribution in relieving the congestion problem. That finding was supported by the Port Authority and the Department of Transportation (R. 1776-81, 2824-25) and, indeed, Butler does not debate the conclusion. (R. 2684). The examiner said that the "benefits are found in the contribution which Pan American proposes to make in developing reliever airports to alleviate congestion in the New York Metropolitan Area." (R. 2866).

In accepting the examiner's general conclusions and approving the agreement, the Board found that Pan American's proposal to invest substantial sums in the development of Teterboro would make a "contribution

toward relieving the congestion" at the jetports and would result in "a real, direct, immediate and substantial benefit." The Board weighed these anticipated public benefits against the slight potential adverse effects which might flow from Pan American's operations under the agreement and concluded that the agreement was not contrary to the public interest and should be approved.

Petitioners argue, however, that the benefits which the Board found are illusory and that, in such circumstances, the detrimental side effects which they foresee require that the agreement be disapproved. In essence, they say that there are other operators available, including the Port Authority itself, who would do the job as well as Pan American and that the Board failed to consider these alternatives. In fact, however, the Board recognized its duty and considered every alternative which was reasonably available.^{13/}

^{13/} In considering an application for approval of a transaction under §408 the Board is required to decide the case before it and must consider those alternatives which are reasonably available, but the Board is not required to consider theoretical possibilities. As this court has said with reference to an application for the approval of a merger of two air carriers:

"Nor does it seem to us that the contention that the Board need have considered, as a prerequisite to its disposition of the merger agreement before it, the dismemberment of Capital and its distribution in parts to unknown prospective purchasers, can be sustained. The situation with which the Board was faced was a very real one, and it was not required to wander preliminarily into what might be fanciful byways. If other proposals, concrete in terms, had been put before it, other courses might have been required in this respect." Northwest Airlines, Inc. v. Civil Aeronautics Board, 112 U.S. App. D.C. 384, 303 F.2d 395, 400 (1962). Accord, Citizens for Allegan County, Inc. v. Federal Power Commission, C.A.D.C. No. 21,842, slip opinion, p. 13 (April 29, 1969).

Faced with Pan American's proposal, the Board had only two realistic choices: Approval, which would mean an immediate start on the desired improvements and an early contribution towards relief of congestion in the New York area; or disapproval, which would mean, at a minimum, substantial delay while the Port Authority prepared plans for its own development of the facility and/or sought another developer. (R. 2824-26). The seriousness of that delay is not to be minimized. At the beginning of this proceeding the Board recognized the gravity of the congestion situation and directed that Pan American's application be processed on an expedited basis. Similarly, the Board reviewed the examiner's decision without briefs and oral argument to avoid further procedural delays. On reconsideration it stated that "the exigencies of time" continue to require prompt disposition of the case, noting that "each month of delay of approval will result in a corresponding delay in completion of the improvements." (R. 3036). It has been nearly five years since Pan American and the Port Authority began to negotiate and there is every reason to fear that if the Port Authority is forced to seek another developer similar delays will ensue.^{14/} Meanwhile, Pan American stands ready to proceed with a substantial development program.

^{14/} Petitioners argue that had the Port Authority itself undertaken the development of Teterboro in 1964, rather than negotiating with Pan American, the job could now be substantially complete. For reasons of its own, however, the Port Authority did not undertake development in 1964 and the Board has refused to second-guess that agency.

"The Port Authority is the public agency which has the direct responsibility for operation of the airport. That agency has determined that the public interest would best be served by Pan American's private development of the airport, based upon its conviction that Pan American is qualified to promote and fully develop Teterboro Airport into one

(footnote continued)

When the Board approved the agreement it did so against the background of this pressing need for action and it found that Pan American's proposal most clearly responded to that need. Petitioners do not argue with the Board's conclusion that the congestion problem has reached crisis proportions, nor do they contend that the development of reliever airports will not contribute some relief to the situation. Nonetheless, they argue that a better alternative to the immediate steps which Pan American proposes to take would be to delay the development program for an indefinite period while the Port Authority seeks another airport operator. They advance that position because they see in Pan American's operation of Teterboro a serious threat to their financial well-being. We show below that their fears are unwarranted and that the likelihood of any serious detrimental side effects is minimal. In prior cases arising under §408, the Board's judgment has been affirmed where it found a favorable balance for the public benefits as compared to the disadvantages of the transaction. Butler Aviation Co. v. Civil Aeronautics Board, 389 F.2d 517 (C.A. 2, 1968)^{15/} In the instant case the public interest in Pan

of the country's outstanding public general aviation airports in the shortest interval of time. The Board should not interfere with the Port Authority's judgment as to the appropriate method for operation of the airport, absent a convincing showing that such method would be detrimental to the public interest. There is nothing in this record that would lead us to the conclusion that this is in fact the case. On the contrary, as the examiner noted, to require that the Port Authority itself undertake the improvement of the airport would inevitably lead to substantial delay." (R. 2980-81).

^{15/} The Butler case involved the proposed acquisition of Remmert-Werner, a major fixed base operator with facilities at several airports, by Eastern Air Lines. There were no serious anti-competitive effects. Judge Friendly upheld the Board's approval of the acquisition although the "only advantage to air transportation lies in (footnote continued)

American's proposal is clear and substantial and the Board so found.

The disadvantages are slight. In such circumstances the Board correctly approved the agreement.

- B. The Board correctly found that the agreement does not create a monopoly which restrains competition or jeopardizes non-party air carriers, and that any anticompetitive effects are outweighed by the public benefits created.

Petitioners next contend that the Board's approval of the agreement is contrary to the first proviso to §408(b) and, therefore, beyond the Board's power. The proviso prohibits the Board from granting its approval to any agreement "which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the . . . operating contract . . ." This statute, which is in the alternative, defines two distinct restrictions. The first bars approval of situations akin to monopolization under the Sherman Act in which the parties to the agreement would have the power to fix prices or to exclude competitors (American Tobacco Co. v. United States, 328 U.S. 781, 811; United States v. Grinnell Corp., 384 U.S. 563, 570-71). The second bars approval if the result of the monopoly would be to threaten the viability of another carrier. As Judge Friendly has noted:

affording EAL the added strength from what it expects to be a good investment in a related activity where it can usefully employ its management skills, and the advantages to 'civil aeronautics,' see §102(f), lie simply in putting EAL's strength behind an already flourishing R-W."
Butler Aviation Co., supra, 389 F.2d at 519.

"Although the proviso's mandate is sharp, its office is exceedingly limited, . . . Restraint of competition or jeopardy to another air carrier is not enough to trigger the proviso unless brought about by the creation of a monopoly; per contra the creation of a monopoly is not enough unless it would restrain competition or jeopardize a non-party air carrier." Butler Aviation Co., supra, 389 F.2d at 519.

Nevertheless, the Board has recognized that under the public interest standards of Section 408, read in the light of the express incorporation of competitive considerations into that standard by Section 102(d) of the Act (49 U.S.C. 1302(d)), ^{16/} it must consider the competitive policies expressed in the antitrust laws and accommodate them with the other public interest standards of the Act. ^{17/}

Although the Board, like other administrative agencies, is thus required to give effect to the policies underlying the antitrust laws, the other factors referred to in Section 102 make clear that it is not to be governed solely by those policies. Under §408(b), it can approve an agreement which to some extent violates those policies if it finds, on careful balance, that the agreement is not inconsistent with the public

^{16/} "In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

* * *

"(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;"

^{17/} Northern Natural Gas Co., et al. v. Federal Power Commission, ___ U.S. App. D.C. ___, 399 F.2d 953, 961; Butler Aviation Co. v. C.A.B., supra, 389 F.2d at 519; Cf. McLean Trucking Co. v. United States, 321 U.S. 67, 86-87.

interest. As this Court has recently summed up the controlling principles in Northern Natural Gas Co. v. Federal Power Commission, ___ U.S. App. D.C. ___, 399 F.2d 953 (1968):

"Nor are the agencies strictly bound by the dictates of the antitrust laws, for they can and do approve actions which violate antitrust policies where other economic, social and political considerations are found to be of overriding importance. In short, the antitrust laws are merely another tool which a regulatory agency employs to a greater or lesser degree to give 'understandable content to the broad statutory concept of the "public interest".'" 399 F.2d at 961, quoting Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 244 (1968). ^{18/}

The Board carefully performed its obligation to consider competitive factors here. ^{19/}

In the instant case the examiner specifically considered the competitive consequences of Pan American's operation of the Teterboro airport under its agreement with the Port Authority. He defined the relevant markets claimed to be affected and the competitive consequences in them of Pan American's operation of Teterboro. In the light of this consideration he concluded, first, that no monopoly would be created; and, second, that there would be no substantial restraint of competition resulting from the agreement.

^{18/} See also the cases cited by this Court in note 11 to its opinion in the Northern Natural Gas case, 399 F.2d at 961.

^{19/} Wholly absent from this proceeding is any allegation that the Board failed to evaluate the possible anticompetitive effects which its approval of the agreement might engender as did the I.C.C. in Denver & R.G.W.R.R. v. United States, 387 U.S. 485 (1967) or that the Board failed "to make findings related to the pertinent antitrust policies, draw conclusions from the findings, and weigh these conclusions along with other important public interest considerations." Northern Natural Gas Co., *supra*, 399 F.2d at 961. Absent also is the sort of narrow construction by the agency of its duty to inquire which caused this Court to remand the S.E.C.'s decision in Municipal Electric Ass'n v. Securities and Exchange Commission, C.A.D.C. No. 21,707, *et al.*, decided March 26, 1969.

The Board agreed. In the light of extensive analyses by both the examiner and the Board of the potential results of the agreement, the Board concluded that "there is no substantial restraint of competition resulting from the agreement." (R. 2990). Although it thus found no reasonable likelihood that the possible harms suggested by petitioners would flow from the transaction, to be doubly certain, the Board retained jurisdiction to impose further conditions should the necessity arise. Thus, after weighing the slight potential for anti-competitive effects together with the other relevant public interest considerations, including the strong public interest in implementing programs to relieve congestion in the New York area (as discussed above), the Board concluded that the agreement "will not be inconsistent with the public interest." (R. 2994).

In such circumstances, an agency's expert judgment is not subject to reexamination by a court unless it was not arrived at in conformity with legal standards. As the Supreme Court has said:

"It would be strange, indeed, if a division of territories or an allocation of routes which met the requirements of the 'public interest' as defined in Section 2 were held to be antitrust violations. It would also be odd to conclude that an affiliation between a common carrier and an air carrier that passed muster under Section 408 should run afoul of the antitrust laws. Whether or not transactions of that character meet the standards of competition and monopoly provided by the Act is peculiarly a question for the Board subject of course to judicial review . . . If the courts were to intrude independently with their construction of the antitrust laws, two regimes

might collide." Pan American World Airways, Inc. v. United States, 371 U.S. 296, 309-10 (1963). 20/

Although these findings should be enough, in view of petitioners' arguments we turn to a detailed statement of the law and facts with respect to them.

1. The agreement does not create a monopoly.

Butler and NATA argue that upon implementation of the agreement Pan American will have a monopoly, specifically with respect to Teterboro Airport itself and, more generally, with respect to general aviation airports in the New York area capable of accommodating high performance aircraft. In support of their analysis they urge upon the court several cases arising under §2 of the Sherman Act, foremost of which is United States v. Grinnell Corp., 384 U.S. 563 (1966). The facts of the cases cited, however, involve situations remote from that presently before the court and do not require reversal of the Board's decision in the instant proceeding. In the Grinnell case, for example, the Supreme Court found a §2 violation in circumstances where one company, through stock interests in three others, employed unlawful and exclusionary practices to garner 87% of the national business in a line of commerce. The facts of that case stand in vivid contrast to the present situation. For, as we show below, there is no basis to conclude that any market shows any likelihood of being monopolized by Pan American.

20/ Accord, North Central Airlines, Inc. v. Civil Aeronautics Board, 105 U.S. App. D.C. 207, 265 F.2d 581, cert. denied, 360 U.S. 903 (1959); American Airlines, Inc. v. Civil Aeronautics Board, 89 U.S. App. D.C. 365, 192 F.2d 417, 420 (1951); United Air Lines, Inc. v. Civil Aeronautics Board, 81 U.S. App. D.C. 89, 155 F.2d 169 (1946); United Air Lines, Inc. v. Civil Aeronautics Board, 371 F.2d 221 (C.A. 7, (1967)).

Petitioners first approach the monopoly problem by suggesting that the agreement will give Pan American a monopoly with respect to Teterboro Airport itself, and, accordingly must be disapproved. Such an approach borders on the frivolous. The common sense of the matter is that with respect to the property which he owns or controls every one is a "monopolist" and, as such, possesses the traditional powers of an owner to set prices (in this case, rents and user fees) and to exclude competing users from his land. See United States v. Du Pont and Co., 351 U.S. 377, 391 (1956).^{21/} But this is not monopoly in the sense to which the statute refers. "Monopoly" there means the power to control prices or exclude competition from an economically relevant market of buyers or sellers--i.e., a distinctive line of commerce in a particular geographic area. No law renders a person's control over his property^{22/} per se illegal.

^{21/} In addition, if a person does not have an unencumbered fee simple in the land, his monopoly power may be further restricted by the instrument through which he obtained possession. This case is a perfect example. Thus the agreement between Pan American and the Port Authority requires the carrier to operate the facility as a public general aviation airport, available to all on a fair, reasonable and not unjustly discriminatory basis. The fees which it may charge are limited, the rules which it may prescribe are not at its unfettered discretion, and so forth.

^{22/} "Anyone who owns and operates the single theatre in a town, or who acquires the exclusive right to exhibit a film, has a monopoly in the popular sense. But he usually does not violate §2 of the Sherman Act unless he has acquired or maintained his strategic position, or sought to expand his monopoly, or expanded it by means of those restraints of trade which are cognizable under §1 of the Sherman Act. United States v. Griffith, 334 U.S. 100, 106 (1948). To the same effect is Arzee Supply Corp. v. Ruberoid Co., 222 F. Supp. 237, 242 (D. Conn. 1963). In any event, as we subsequently show, Pan American does not have the only airport in town.

Of course transportation facilities such as railroad terminals and airports are, by their very nature, limited. In recognition of this the antitrust laws permit combined activities with respect to such facilities when they can be justified because they provide, with substantial economies of scale, efficient services which might not otherwise be available. See ^{23/} United States v. Terminal RR Association, 224 U.S. 383. However, as reflected by the decree in the Terminal RR. case, close supervision is provided to guarantee that the services of the facility will be available on nondiscriminatory terms. That, as we show below, is precisely the kind of protection which obtains in this case under the provisions of the agreement, the powers of the Federal Aviation Administration and the Board, and express provisions of law. Moreover, competition with other airport operators in the relevant market operates as a direct limitation on Pan American as an independent operator of Teterboro.

The definition of a geographic and a product market is a practical, common sense matter. See United States v. Grinnell, 384 U.S. at 575-76; Brown Shoe Co. v. United States, 370 U.S. 294, 336-37; United States v. Philadelphia Nat. Bank, 374 U.S. 356-57, 359; United States v. Pabst Brewing Co., 384 U.S. 552, 549-50. Transportation markets of the kind ordinarily involved in common carrier cases are usually defined as the ^{24/} offers and demands for transportation between two given points. In

^{23/} See Kayson and Turner, Antitrust Policy, 137 (1959).

^{24/} See generally Meyer, Zwick, Stenason and Peek, The Economics of Competition in the Transportation Industry (1959).

general aviation, however, this definition is not satisfactory because no regular pattern of transportation is involved. General aircraft use is as varied and diversified as the use of private automobiles. The two most obvious general aviation markets involving airports in this case are: (1) use of the field as a base for aircraft permanently located in the New York area; and (2) use of the field as a landing and departure point for aircraft temporarily in the New York area. Subsidiary to this are the various related submarkets involving aircraft service, maintenance, sales, etc. Under these criteria the Board was thus concerned with a regional market in which, necessarily, other New York area airports offering the same services had to be included.

Petitioners argue, however, that the location of Teterboro and the physical facilities which it possesses are such that Teterboro is the "dominant general aviation airport" in the New York area and the "only one" reasonably suited to accommodating all types of general aviation activities, indeed the "only airport serving general aviation exclusively." Further, they argue, it is of "such prominence" among the area's airports that control of it must be deemed to be control of general aviation airports in the New York area. (Pet. Br. 37):

By so defining the relevant line of commerce as to include only airports which cater exclusively to general aviation they seek to exclude not only the three jetports, each of which is presently accommodating a substantial amount of general aviation traffic (R. 1737, 1739, 1741, 2870-71), but also such important general aviation airports as Westchester County Airport (which handles roughly as many general aviation movements

as does Teterboro, R. 1743, 1744) and MacArthur Field (which has by far the largest volume of general aviation traffic in the metropolitan area, surpassing Teterboro 318,000 annual operations to 275,000 (R. 1743, 1755)). By limiting the geographic area to places within 25 miles of midtown Manhattan they seek to exclude, among others, Westchester County Airport (26 miles from Times Square) and Republic Aviation Airport (29 miles).^{25/}

Of course, it is always possible to so define the relevant line of commerce and the appropriate geographic area to fit the business of the alleged monopolist. Cf. United States v. Grinnell Corp., 384 U.S. 563, 587 (1966) (Mr. Justice Fortas dissenting). Properly, however, the search for an appropriate line of commerce requires an ascertainment of a line of products or services which is "sufficiently inclusive to be meaningful in terms of trade realities." Crown Zellerbach Corp. v. Federal Trade Commission, 296 F.2d 800, 811 (C.A. 9, 1961), cert. denied, 370 U.S. 937 (1962). Accord, United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963). Similarly, the appropriate geographic area "must be charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies." Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320, 327 (1961).

Petitioners offered their definitions of the appropriate line of commerce (airports serving only general aviation which are capable of accommodating high performance aircraft) and the relevant geographic area

^{25/} Petitioners also ignore the existence of a number of smaller general aviation facilities in the metropolitan area. (R. 2870-71).

(a circle around midtown Manhattan with a 25 mile radius). The examiner refused to accept those definitions (R. 2870-71). Rather he looked to the existence of a number of additional airports in the metropolitan area which do in fact serve a large volume of general aviation traffic notwithstanding that some also serve air carriers.^{26/} As noted above, Teterboro is not even the largest general aviation airport in the metropolitan area in terms of the number of aircraft operations, let alone the "dominant"^{27/} one. Everyone in this proceeding is agreed that Teterboro is the "best and most conveniently located" general aviation airport in the metropolitan area (R. 2870). Indeed, it was on that premise that the Board concluded that its development would be most likely to attract a significant amount of general aviation traffic from the jetports. But the facts that some

^{26/} While it is true that both Westchester County Airport and MacArthur Field are served by commercial air carriers, that service amounts to only about twenty operations per day in each case (R. 1747, 1755). Moreover, the owner of the Westchester facility, the Board of Supervisors of Westchester County, has recently indicated to the Board that it favors a continued emphasis on general aviation activities at that airport and that it intends to restrict the number of daily scheduled airline flights to twenty. Service to White Plains, New York, Docket 19201, Initial Decision, p. 30, (February 27, 1969). These minimal air carrier operations hardly justify exclusion of the two airports from consideration as practical alternatives to which a person engaged in general aviation in the New York area may turn for services.

^{27/} There might well be other measures than number of aircraft operations. Thus, the record reveals that 141 multi-engine aircraft are based at Westchester County Airport, as compared with only 90 at Teterboro (R. 1743, 1747). However that may be, petitioners have suggested no standard by which the airports should be compared but has contented itself with rigid insistence on the conclusion that Teterboro is the most important general aviation airport rather than persuasive reasons in support of those conclusions.

of the other airports are less well-equipped than Teterboro and that others are farther from Times Square do not negative the existence of those other airports which can and do accommodate a substantial amount of general aviation business and effectively compete with Teterboro.^{28/}

The simple fact is that Pan American's operation of Teterboro will not result in an increase in the extent to which control of the area's airports is concentrated. Indeed, quite the contrary. Under the agreement a new operator which controls no other airports will enter the field; and, whereas the Port Authority was formerly responsible for the day-to-day operation of four airports, it will now operate only three. Such a situation is a far cry from the sort of market domination proscribed by §2 of the Sherman Act. Cf. United States v. Grinnell Corp., 384 U.S. 563 (1966).

Quite plainly, unless petitioners show that the Board abused its discretion in finding that the agreement creates no monopoly or that the Board otherwise failed to conform to the applicable legal standards, its case must fail. Petitioners have made no such showing. North Central Airlines, Inc., supra, 265 F.2d at 584.

^{28/} Petitioners have made no attempt to rebut the examiner's definition by showing that the inclusion of airports accommodating a large volume of general aviation traffic but not devoted exclusively to general aviation (e.g. Westchester County Airport) within the appropriate line of commerce is not "meaningful in terms of trade realities." Crown Zellerbach Corp., supra, 296 F.2d at 811. Similarly, petitioners have not attempted to demonstrate that airports beyond their arbitrary 25 miles radius are not within the "market area" in which Teterboro operates or that they are so situated that New York customers for general aviation services can not "practicably turn" to them. Tampa Electric Co., supra, 365 U.S. at 327.

2. Implementation of the agreement will not enable Pan American to restrain competition in the sale of high performance executive aircraft.

Petitioners next argue that implementation of the Teterboro agreement will enable Pan American to restrain competition in the sale of high performance executive aircraft and that this restraint of competition when combined with Pan American's monopoly at Teterboro requires disapproval of the agreement as violative of the first proviso to §408(b). We have already demonstrated that the agreement does not give rise to a monopoly at Teterboro and, hence, it is clearly not violative of the proviso. Cf. Butler Aviation Co., *supra*, 389 F.2d at 519. The Board went further, however, and found that "there is no showing on this record that this would result in any substantial restraint of competition in the sale of such aircraft." (R. 2988). We think it clear that that conclusion was correct.

Pan American is the exclusive United States distributor of the Fan Jet Falcon, a high performance executive or business jet aircraft manufactured in France. Business jets are manufactured and sold in the U.S. and Europe by at least 14 competing manufacturers, including six in the United States, two in Great Britain, and one in France.^{29/} In addition,

^{29/} These facts and some of those which follow were taken from the examiner's initial decision, adopted by the Board, in the Eastern-Remmert Werner Acquisition Case, C.A.B. Docket 17769. Much of the material is included in Judge Friendly's opinion affirming the Board's disposition of that proceeding. Butler Aviation Co. v. Civil Aeronautics Board, 389 F.2d 517, 519-20 (1968).

jet aircraft compete with many types of propeller aircraft for the custom of businessmen. The industry is highly competitive with no manufacturer possessing a dominant share of the market. Thus, in 1965-66 there were six jets in the 8-14 passenger category including the Falcon with 12% of the market, the British DH-125 with 15% and the Lear Jet with over 30%. Entry into the industry is evidently relatively easy, since in the last several years a number of new executive jets have been introduced and others are projected. Sometimes the aircraft are distributed by their manufacturers, but often distribution is handled by another firm such as Pan American in the case of the French Falcon. Obviously, the number of competing distributors is a function of the number of competing manufacturers.

Atlantic Aviation, the fixed base operator at Teterboro, distributes the DH-125 and the Grumman Gulfstream II. Pan American, on the other hand, currently bases its fleet of demonstrator Falcons at Westchester County Airport, but headquarters its Falcon sales force in the Pan Am Building in Manhattan. The customer does not usually come to the distributor. Rather, a demonstrator aircraft is flown to a site convenient to the prospective purchaser and the actual sales take place throughout the country.

Not surprisingly, Pan American is considering moving its demonstrator aircraft from Westchester, where it pays storage charges, to Teterboro. On this proposed change in the location of its hangar facilities, petitioners predicate their argument that Pan American will be able to restrain competition in the sale of high performance executive jets.

They argue that the location of Teterboro is so strategic that its possession alone will insure dominance in the sale of such aircraft, at least in the New York market.^{30/} Such an assertion is contrary to the experience of Atlantic Aviation which is now the sole distributor of executive jets at Teterboro and yet has been able to capture (together with its co-distributors) only 15% of the market for the DH-125, hardly a dominant share and only half the market share of one of its competitors. Clearly, then, its location at Teterboro has not enabled Atlantic Aviation to restrain competition in the sale of jet aircraft.^{31/}

^{30/} Although neither the examiner nor the Board specifically ruled on the question, it would appear that the only geographic market in which the impact of the agreement on the sale of executive aircraft can be measured is national in scope. In United States v. Grinnell Corp., 384 U.S. 563, 575-76 (1966) the Supreme Court found that the appropriate geographic market for an examination of competition in the accredited central station service industry (fire and burglar alarms) was the nation as a whole, notwithstanding the distinctly local nature of the services provided, because, inter alia, the business was operated on a national level, with national planning and a nationwide schedule of prices. The present case, where there is typically a single nation-wide distributor of a line of aircraft and where the planes are sold and demonstrated at locations throughout the country, much more compellingly calls for consideration of the "broader national market that reflects the reality of the way in which [the business is conducted]." Id. at 576. If the appropriate geographic market is national, it is difficult to see how the location of a single facility could have an appreciable effect on sales, let alone how it could result in a "substantial lessening of competition."

^{31/} In a footnote to its opinion the Board noted that the President of Atlantic Aviation had "expressed no concern with respect to Pan American's operation of Teterboro by reason of the fact that it was an airline and a distributor of high performance executive jet aircraft." (R. 2988). Petitioners now object that the Board improperly drew such an inference from his testimony, alleging that questioning on the specific subject was prematurely cut off by the examiner. (Pet. Br. 42). In fact, however, petitioners never offered any evidence relating to the views of the President of Atlantic Aviation with respect to the issue of whether Pan American's operations as an airline and a distributor of a competing line of executive jet aircraft rendered it unfit to be the airport operator. (R. 2548-58).

The aircraft are very expensive, ranging in price from \$500,000 to several million dollars and, as Judge Friendly remarked, "A corporation considering such a purchase is likely to make a rational and well-considered choice as to which airplane best suits its requirements" Butler Aviation Co., supra, 389 F.2d at 520. It seems improbable that such a potential purchaser would be swayed by the location of Pan American's facility. The Board specifically found that "considering the very substantial cost of such aircraft, and the many differences between the various competitive aircraft, it would hardly be realistic to assume that the location of the hangar base for demonstrator aircraft could or would have any substantial impact on the competitive sales of such aircraft." (R. 2988). No other interpretation of the facts accords with common sense.

The facts presented by this case are remote from those of cases arising under §7 of the Clayton Act which typically involve a vertical or horizontal merger in a particular line of commerce. The businesses of operating Teterboro and selling executive aircraft are not related horizontally or vertically in substantial degree to one another or to the air transportation functions which are Pan American's principal occupation.^{32/} Moreover, the present situation is in no way in conflict with the

^{32/} Similarly, the proposed venture is only remotely analogous to the product extension considered by the Supreme Court in Federal Trade Commission v. Proctor & Gamble Co., 386 U.S. 568 (1967), cited by petitioners. In that case both the acquiring and the acquired companies dominated their fields. Moreover, the Court found that the acquiring company was the most likely entrant into the field of business of the acquired company. These elements are totally lacking in this case since Pan American does not dominate either air transportation or executive jet sales and is unlikely
(footnote continued)

underlying Congressional purpose in enacting the 1950 amendment to §7, viz., to arrest "what was considered to be a rising tide of economic concentration in the American economy." Brown Shoe Co. v. United States, 370 U.S. 294, 315 (1962). There has not been a scintilla of evidence that the agreement will produce "a firm controlling an undue percentage share of the relevant market" or that it will result "in a significant increase in the concentration of firms in that market" or that it "is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that [it] is not likely to have such anti-competitive effects." Philadelphia National Bank v. United States, 374 U.S. 321, 363 (1963).

It is true, of course, that petitioners have been able to suggest a number of techniques by which Pan American might possibly attempt to restrain competition.^{33/} However, in light of the safeguards inherent in the terms of the agreement and in the continued jurisdiction of the Port Authority, the Federal Aviation Administration and the Board over Pan American's activities at Teterboro, the Board was warranted in finding

to enter the airport field through construction of its own facility. Moreover, Teterboro is but one of several thousand airports in the nation. Finally, the two areas of activity do not have that "ready blend" which would make the combined operation so formidable to its competitors as did the merged corporation in Proctor & Gamble. Cf. Butler Aviation Co., supra, 389 F.2d at 520-21.

^{33/} Thus, e.g., Pan American could discriminate against purchasers of other executive aircraft in the allocation of landing rights, hangar or tie-down space, or similar services and facilities. Of course, such action would be in clear violation of the agreement, the Board's conditions in approving the agreement, and Pan American's assurances to the Federal Aviation Administration under the Federal Grant Agreement.

that it was unlikely that the imagined results would follow and, accordingly, that the agreement would not enable Pan American to restrain competition in the sale of high performance executive aircraft.

In brief, it is clear that petitioners have failed to demonstrate that the Board abused its discretion in finding that the Teterboro agreement would not enable Pan American to restrain competition in the sale of high performance executive aircraft.

3. Implementation of the agreement will not enable Pan American to restrain competition in the transportation of passengers connecting to air carrier flights.

Petitioners' final antitrust argument is that Pan American will be able to use its position as the operator of Teterboro Airport to restrain competition in the transportation of persons who travel by helicopter or air taxi from Teterboro to one of the jetports, there to connect with an airline flight. They contend that, notwithstanding the fact that such conduct is expressly prohibited by the Teterboro agreement, Pan American will "exclude air taxi or helicopter services designed to provide connections to the flights of other airlines, while encouraging such services between Teterboro and the Pan American terminal at Kennedy or the Pan American gate at Newark" and thereby gain an unfair share of this connecting traffic for itself. (Pet. Br. 44). In addition, as an example of the dominance which Pan American allegedly exercises over air transportation in the New York area, petitioners refer to the aid agreement between Pan American and New York Airways, the certificated helicopter operator in the New York metropolitan area, under which New York Airways has operated

passenger service between Teterboro, the jetport on the roof of the Pan Am Building in Manhattan, and the Pan American terminal at Kennedy.

These contentions overlook the fact that the various aid agreements between helicopter operators and fixed-wing carriers exist only by virtue of the Board's specific approval, granted under special circumstances, and, moreover, that the Board has retained jurisdiction to impose further conditions, should the need arise, on both the helicopter aid agreements and the Teterboro agreement. Insofar as existing certificated helicopter operators are concerned, none is currently financially self-sufficient and, since they are no longer subsidized with federal funds, each has concluded financial support agreements whereby its operations are, to some extent, subsidized by one or more fixed-wing carriers. Normally, the fixed-wing carriers limit their subsidy to particular services with the requirement that such service originate and/or terminate at the supporting carrier's airport terminal.^{34/} The Board, although reluctant to approve the sort of control relationships involved, has deemed it desirable to carry on the helicopter experiment with the hope that one day soon the operations will become economically self-sufficient. Accordingly, it has approved the sort of arrangements described, but only after imposing conditions designed to protect the public interest and the integrity of the helicopter airlines

^{34/} Undoubtedly, the carriers involved would agree with petitioners' analysis that there is a competitive advantage for them in having the helicopters land at their terminals rather than at the terminal of a competitor.

^{35/}

to the maximum extent possible.

Under an agreement with Pan American, New York Airways has operated flights for several years between the Pan Am Building heliport, the Pan American terminals at Kennedy and Newark, and Teterboro and Westchester County Airports and, under a similar arrangement with TWA, it has operated between the Port Authority's Wall Street heliport and the TWA terminals at the three jetports. It is now about to commence operations under an agreement with American Airlines. The Board conditioned its approval of the Pan American and TWA agreements on the requirement that the "common carriage nature of NYA's operations shall be maintained and in the operation of NYA's services no preference shall be given to TWA or Pan American (other than as provided in the agreements) or to passengers using these two carriers." Pan American World Airways, Inc., C.A.B. Order 68-7-169 (1968). In fact, a C.A.B. examiner had found that, notwithstanding the agreements, the "large majority of passengers carried by NYA in the New York area are connecting passengers of carriers other than Pan American and TWA."

^{36/}

The Board also prohibited Pan American and TWA from interfering with the right of New York Airways to negotiate similar support agreements with other fixed-wing carriers or "from restricting or restraining in any manner whatsoever NYA's operations from the Pan

^{35/} A brief history of the problem can be gleaned from an analysis of the following orders: Los Angeles Airways, Inc., C.A.B. Order E-23268 (1966); New York Airways, Inc., C.A.B. Order E-23714 (1966); San Francisco & Oakland Helicopter Airlines, Inc., C.A.B. Order E-24800 (1967).

^{36/} Pan American World Airways, Inc., C.A.B. Docket 19861, Initial Decision, p. 9 (June 25, 1968).

Am Building heliport or any other heliport in the metropolitan New York City area."

Thus, Pan American is specifically prohibited from interfering with the right of New York Airways to carry connecting passengers for other carriers and the Teterboro agreement provides in §26(e) that Pan American can in no way exclude any other airline from participating in helicopter operations at Teterboro. The agreement further provides that Pan American must make facilities for the sale of airline tickets for passage on flights leaving from the jetports available to all carriers on a fair, equal and not unjustly discriminatory basis. There is no reason for this Court to assume, as would petitioners, that either the Port Authority or the Board will be lax in its duty to enforce these provisions.^{37/}

^{37/} Petitioners continue to see hidden dangers in every move by Pan American to facilitate the flow of passengers between the jetports and their origins or destinations elsewhere in the metropolitan area. Thus, petitioners recently asked the Board to reopen the record in this proceeding so as to allow them to introduce evidence that Pan American has recently concluded an agreement with Flight Shuttle, Inc., an air taxi operator, to provide helicopter service between the East River heliport at 60th Street and the Pan American terminals at Kennedy and Newark. The Board declined to reopen the record at this late date (C.A.B. Order 69-4-43 (April 9, 1969)), noting that the proffered evidence was largely repetitious of material already in the record, that it was of little probative value, and that it did not provide any reasonable basis for reconsidering the Board's decision in this case, "particularly in light of the urgency for maximum development of Teterboro Airport, and the provisions of both the Teterboro Agreement, and the Board's Order, which provide ample means for protection of the public interest." (footnotes omitted). The Board went on to observe that the service by Flight Shuttle was to be in "common carriage," and that Pan American had specifically alleged that it would be available to all passengers, not just those connecting to Pan American flights. Moreover, the agreement does not prohibit Flight Shuttle from entering into similar arrangements with other air carriers. (Indeed, since the Board's order TWA has announced that it, too, has concluded an agreement with Flight Shuttle for operations from the 60th Street and Wall Street heliports, on the one hand, to the TWA terminals at the three jetports, on the other hand. C.A.B. Agreement 20984). Finally, the (footnote continued)

The question of whether the New York Airways-Pan American agreements are in the public interest is not before this Court and any attempt to litigate that question in the context of this proceeding should be resisted. The fact remains that the Teterboro agreement will in no way "create" a monopoly for Pan American with respect to persons desiring to connect by helicopter or air taxi from Teterboro to an airline at the jet-ports, nor does the existence of the Teterboro agreement bear on whether New York Airways' operations under its agreements with Pan American are in restraint of competition.

Whether or not the Teterboro agreement at issue here is approved, New York Airways can continue to serve Teterboro under its agreement with Pan American, except that if the Teterboro agreement is approved Pan American will be under the additional restraints imposed by the agreement to avoid any discrimination against passengers connecting with other airlines or against helicopter and air taxi operators who provide connections with other airlines. Under such circumstances it is clear that the Board correctly found that the Teterboro agreement will not enable Pan American to restrain competition in the transportation of these connecting passengers.

Board noted that "Whether the agreement is in fact consistent with the public interest is a matter for determination in the proceedings before the Board under Sec. 412 of the Act. Petitioners are, of course, free to submit whatever views they may have on the matter in connection with those proceedings."

C. The Board did not err in concluding that Pan American will have no significant conflict of interest with general aviation in the operation of Teterboro.

1. The interests of Pan American, general aviation, and the public coincide in the development of Teterboro.

Butler and NATA contend that Pan American has a vital self-interest as an air carrier, in the development of Teterboro in a "manner, best suited to the needs of air carriers, rather than general aviation." (Pet. Br. 20). They assert that the approval of the Teterboro agreement will only serve to intensify the alleged conflict between the air carriers and general aviation for the allocation of air space and airport facilities in the New York area. The Board disagreed.

"Even if there were a conflict between airlines and general aviation resulting from congestion at the major New York metropolitan airports, there nevertheless would be no incentive for Pan American to operate Teterboro in a manner which would be detrimental to general aviation. With respect to the operation of the Teterboro Airport, the interests of Pan American and general aviation, as well as the public interest, are parallel; that is, the fullest development of Teterboro Airport for general aviation in a manner which will provide relief of congestion at the major New York metropolitan jetports." (R. 2986-87).

This being the case, and all the parties having the same motivation and objective, there is no reason to conclude that the effectuation of the objective will give rise to further conflict. ^{38/}

^{38/} It is noteworthy that the president of Atlantic Aviation, a fixed base operator at Teterboro, never voiced support for Butler's conflict of interest theory. (R. 2796). He objected only to the economic feasibility of the charges set out in the TAMS report (R. 2551-52), which are illustrative only. (R. 1131-32).

The petitioners argue that the Board's conclusion is not supported by the record. But the contrary is true. The magnitude of the congestion crisis (R. 1230-32, 1249-52, 2108-09), the urgent need to alleviate the situation (R. 1855-56, 2108-09), and the key role of general aviation airports in the alleviation of the crisis (R. 420, 1166, 1171-74, 1180) are all well-documented.

There are other compelling reasons to believe that Pan American's operation of Teterboro will avoid conflict with general aviation. These are its large investment and heavy fixed charges as airport operator. If Pan American were to engage in practices harmful to general aviation it would only serve to make Teterboro unattractive to prospective users, whether itinerant or permanent, which in turn, would eliminate or reduce Pan American's opportunity to earn a reasonable rate of return on its proposed investment. (R. 2984). The amount of the proposed investment together with the sizeable fixed annual payments Pan American has agreed to make to the Port Authority give Pan American an overriding incentive to operate Teterboro in such a way as to attract general aviation to Teterboro, properly serve its needs, and thereby achieve reasonable profits.

Petitioners' suggestion (Pet. Br. 29) that Pan American's proposed \$15-20 million investment at Teterboro is a paltry sum in comparison with Pan American's air transport revenues and that Teterboro will, therefore, be managed to support the latter revenues is totally lacking in logic. In the first place an investment of \$15 or \$20 million cannot be ignored, even by Pan American. More importantly, what Pan American does at Teterboro will have little to do, one way or the other, with most of its air

transport revenues, but such action will be decisive of its ability to support an investment of up to \$25 million at Teterboro and an obligation to make a fixed minimum payment of \$664,640 per year for each of the last 25 years of the agreement. There is not the slightest doubt that the pressure on Pan American to succeed at Teterboro economically would require it to satisfy its customers, the general aviation interests, in comparison with the competitive airports at White Plains, Islip, Morristown, and the soon to be revitalized Farmingdale, as well as the continued operations of the major New York area jetports.

It must be concluded therefore that the dominant pressures on Pan American in the operation of Teterboro will motivate it to serve general aviation to the best of its ability thus relieving congestion at the major jetports and enhancing the profitability of its investment at Teterboro.

2. The terms of the operating agreement and the Board's retention of jurisdiction sharply limit Pan American's ability to take action detrimental to general aviation.

Pan American's best interests are served by cossetting general aviation in the operation of Teterboro rather than attacking it. But even if Pan American had other designs, its freedom to act against general aviation is so sharply limited by the supervisory authority of the Port Authority under the agreement, by the supervisory authority of the Board by its retention of jurisdiction under the order of approval, and by the Federal Aviation Administration under the Federal Airport Act, that there is little likelihood of any meaningful harm to general aviation, petitioners' speculative assertions to the contrary notwithstanding.

Petitioners contend that under the agreement Pan American has "nearly unfettered control over rates, leases, rules and regulations" (Pet. Br. 14). Reference to the agreement, however, discloses that Pan American does not have a degree of control over such matters sufficient to permit it to tyrannize both the users and "tenants" of Teterboro as Butler and NATA seek to establish. Initially, it obligates Pan American to operate Teterboro as a public airport. Inherent in such an obligation is the requirement that the airport operator deal impartially with all users of the airport. In addition, it contains numerous other restrictive provisions relating to rates, leases and rules and regulations.

With respect to rates, Sections 26 and 35 of the agreement require that Pan American's charges "shall be at fair, reasonable and not unjustly discriminatory rates." (R. 164, 170). Moreover, Pan American was prohibited from raising rates above the levels of other Port Authority airports in the area without the express permission of the Port Authority. These provisions are designed to protect any segment of the general aviation community from oppressive treatment by Pan American. However, since the Port Authority raised landing fees after the agreement was signed, the Board addressed itself to the rate situation and imposed a condition on its approval in this regard. The condition imposed by the Board was designed both to protect ". . . the general aviation public from unreasonable charges" (R. 2983) and to "permit Pan American flexibility to meet rising cost trends within an area of discretion . . ." (R. 3037).^{39/}

^{39/} "The provision of the agreement relating to Port Authority consent for charges imposed by Pan American at Teterboro Airport shall be (footnote continued)

Petitioners also express the fear that Pan American may lower rates until it has attracted "all of the business from its competitors . . . and then raise them to almost any level the traffic will bear." (Pet. Br. 15). However, there is not a scintilla of credible evidence that this was likely to occur,^{40/} or that the low rates would be harmful to general aviation, or that Teterboro could handle all of the business of its competitors made available by such manipulation, or that such rate manipulation would result in the elimination of any of Teterboro's competitors, or that Teterboro could keep its enlarged business if it raised rates to "almost any level." What is clear is that Pan American is limited in the amount that it can raise rates without Port Authority approval, and that it cannot discriminate. Since Pan American is not a monopolist at Teterboro there is no danger from petitioners' speculation.

modified to provide in effect that any charges proposed by Pan American in excess of the highest charges prevailing as of September 19, 1967, of a similar nature at other airports owned or operated by the Port Authority will be subject to the approval of the Port Authority: Provided, however, that if the Department of Commerce index 'Implicit Price Deflator for Gross National Product' shows any change against the base year of 1967, the September 19, 1967 charges will be deemed to be proportionately adjusted, provided further that there shall be no charges in excess of the then current highest prevailing charges of a similar nature at other airports owned or operated by the Port Authority except with Port Authority approval." (R. 3038-39).

^{40/} The evidence referred to by petitioners involved the Republic Aviation Airport. It is not apposite here because Republic Aviation charged no landing fees--a policy which Pan American hoped to keep in effect until there was a long-range development program for Republic as a public airport so as to avoid the expenses involved in the collection of landing fees. (R. 1641-42). Pan American's agreements with the Fairchild-Hiller Corporation and the Farmingdale Company for the operation of Republic Aviation Airport were disapproved by the Board. (R. 2975).

As for the agreement's provisions, Pan American will not be free to enter into any agreements "for the use or occupancy of the Airport or any part thereof without the prior written consent of the Port Authority." (R. 141). Certainly, before an agreement is finalized the Port Authority will have the opportunity to see if it has any unreasonable or discriminatory terms which violate the obligation to operate Teterboro as a public airport and/or the responsibility to furnish services on a "fair, equal and not unjustly discriminatory basis." (R. 131, 152, 164).

Pan American's power to make and enforce rules and regulations is also limited. It may only formulate rules and regulations consistent with those theretofore promulgated by the Port Authority. (R. 138-39). The examples of rules Pan American may enforce (Pet. Br. 16) were the result of negotiations between the Port Authority and Pan American, and represent the Port Authority's view of regulations which are consistent with the public interest. They are obviously the kind of rules which must exist and be enforced if the airport is to run on a safe and sound basis. Since there can be no discrimination in their enforcement, they are obviously not objectionable.

Enforcement of the provisions of the agreement, including those prohibiting discrimination, has been vested initially in the Port Authority, but the Federal Aviation Administration and the Board also have "watchdog" powers. As the Board emphasized, the Port Authority may terminate the agreement upon thirty (30) days notice in the event that Pan American fails to "keep, perform and observe each and every other promise, provision and agreement set forth in this Agreement." (R. 149, 2985).

This right of termination is ". . . in addition to and not in lieu of any and all rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Airport operator" (R. 150, 2987).

The supervisory role of the Federal Aviation Administration is reflected in two separate provisions in the agreement. Section 2 of the agreement requires that the airport operator comply with all applicable laws and regulations. (R. 131). Among the laws to which Pan American is thus subject as operator are the provisions of Section 308(a) of the Federal Aviation Act which prohibits any "exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended." (R. 2985).^{41/} Moreover, since the Port Authority applied to the Federal Aviation Administration for the grant of funds to improve Teterboro, Pan American is subject to FAA surveillance under Section 11(1) of the Federal Airport Act.^{42/}

Sections 40(d) and (e) of the agreement buttress these statutory safeguards by making Pan American subject to the assurances given in any FAA Grant Agreement such as the one of January 2, 1968. (R. 2985). Among those assurances is the one that Pan American ". . . will keep

^{41/} 49 U.S.C. 1349(a). The FAA administers §308 under the terms of the Department of Transportation Act of 1966. 49 U.S.C. 1655(c)(1).

^{42/} 49 U.S.C. 1110(1), Airports related to a development project must "be available for public use on fair and reasonable terms and without unjust discrimination."

the Airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes." (R. 256, ^{43/}1059).

In the very unlikely event that the safeguards outlined are insufficient to preclude any oppressive treatment of general aviation by Pan American, the Board took the further precaution of retaining jurisdiction "to impose such further conditions as might be required." (R. 2985). In view of the Board's clear articulation of its expectation that the agreement is to be utilized to secure improved facilities for general aviation with a consequent reduction of congestion at the major jetports it is a significant indicator of the manner in which its jurisdiction may be exercised.

In light of the foregoing, there is no showing by the petitioners that the conditions suggested by NATA for imposition on Board approval of the Teterboro agreement were at all necessary. (Pet. Br. 35). NATA desired that the Port Authority be given sole power to enact changes in rates or rules and regulations as well as over the negotiation, grant, modification or termination of leases. (R. 2918). ^{44/} The Board

^{43/} Conditions imposed on airport users must be "fair, equal and not unjustly discriminatory." (R. 1059).

^{44/} NATA also wanted to prohibit Pan American from inhibiting the transportation between Teterboro and the three New York jetports of passengers connecting with other carriers. (R. 2918-19). Such a condition is needless because Section 26(e) of the agreement already embodies such a prohibition. (R. 165). Besides, it would scarcely be to Pan American's economic advantage to operate Teterboro in such a fashion. (R. 2989). The same reasoning applies to the proposal that Pan Am be prohibited from influencing Teterboro passengers to use Pan Am's air carrier services. (R. 2918). See the discussion supra, p. 44 .

Additionally, NATA desired that Pan Am be forbidden from discriminating against any class of aircraft or aircraft operators—a condition
(footnote continued)

specifically considered these conditions and rejected them as being unnecessary in light of the safeguards previously discussed. (R. 2992).

3. The Board did not err in permitting Pan American, a private party for profit, to operate Teterboro.

Petitioners argue that the Board erred in approving the operation of Teterboro by a private party for profit. (Pet. Br. 30). They say that Pan American should not be given the power to resolve conflicts between "different segments of the general aviation community"--a power which should allegedly remain only in the hands of a government body. (Pet. Br. 31). Allegedly, the Board failed to exercise its independent judgment on this matter and did not make an adequate statement of its reasons for rejecting this argument. (Pet. Br. 33-34). In fact, the Board considered and discussed these issues in detail (R. 2980-81), and rejected petitioners' contentions.

To begin with, the Board noted that the Port Authority is the public agency with direct responsibility for operating Teterboro, and that it had determined that the public interest would best be served by Pan American's private development of the airport. Absent a convincing showing that such a determination would be detrimental to the public interest, the Board felt constrained to give scope to the Port Authority's determination. The Board pointed out that if the Port Authority were to undertake development substantial delays would ensue. Furthermore, the

already found in the FAA Grant Agreement. Finally, submission to the Board of "any proposed changes in existing agreements" was suggested. The Board indicated the scope of its future activities in this area. (R. 2993-94).

Board observed that both the Congress in enacting the Department of Transportation Act,^{45/} and the Department of Transportation in the course of the proceeding (supra, p. 11), took the position that private enterprise and investment should be utilized wherever possible in airport development. Thus, the public agencies directly involved in Teterboro and matters of this kind were unanimously of the view that private development of Teterboro was in the public interest.

To be sure the Board did not attempt to resolve the question committed to the Port Authority as to whether the Port Authority should continue to operate Teterboro. It confined itself to the determination of whether the operation of Teterboro by Pan American would comport with the statute.^{46/} In making its determination the Board assumed that in the absence of approval the Port Authority would operate Teterboro and develop it on a delayed basis. On this premise, the Board proceeded to an examination of the agreement itself and found "quite in contrast to indicating any derogation by the Port Authority of its responsibility for the protection of the public interest, [the agreement] contains numerous provisions to insure that the airport will be operated as a public airport, with services and

^{45/} Section 2(b)(1) of the Department of Transportation Act (80 Stat. 931) states as one of the purposes of the establishment of the Department, "to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible * * *."

^{46/} The decision made by the Port Authority to turn to private operation is not unlike that made by the City of Allegan to sell its power generating and distribution facilities to the Consumers Power Company, a decision which this Court recognized was made by a public body. Citizens for Allegan County, Inc. v. Federal Power Commission, C.A.D.C. No. 21842, decided April 29, 1969.

charges being on a fair, equal, reasonable and not unjustly discriminatory basis." (R. 2981-82). The Board pointed out the various provisions of the agreement it relied on and added a new condition to insure the result it desired.^{47/} It proceeded then to consider the possibly anti-competitive effects of the agreement (supra, 28) and the possible conflicts of interest arising from the agreement (supra, 49), and weighed all of this against the benefits to be derived from the agreement, before concluding that approval was not inconsistent with the public interest.

Assertions by petitioners that the Board did not understand or answer their arguments are without foundation. (Pet. Br. 33). The Board's answer to the argument that Pan American should not exercise "quasi-governmental powers" was that Pan American was so limited and supervised by the Port Authority, and otherwise controlled by the Board and FAA that it would not be inconsistent with the public interest to permit it to exercise the remaining powers. (R. 2984-85). The "light plane" controversy which petitioners used as an illustration of their view does not support their position. They argued that Pan American would be able to select between different types of aviation activity at Teterboro and that such selection should only be made by a public authority. (Pet. Br. 33). Since the record examined the question and Pan American's

^{47/} The modification required Pan American to secure Port Authority approval for rate increases above the levels the Port Authority had established at other comparable airports on September 19, 1967. This had the effect of eliminating Pan American's discretion to advance rates up to the increased level established by the Port Authority on August 1, 1968.

views on it, the Board explained the controversy and made a finding that "Pan American's approach is the one that is consistent with the public interest." (R. 2990). Petitioners now object that this was not in issue and the Board should not have made a finding. (Pet. Br. 37). The point is that on this "quasi-governmental" issue which was explored on the record, the private party's position was "consistent with the public interest." This supports the view that private operation and development of Teterboro is not inconsistent with the public interest. ^{18/}

4. Pan American will not have the power to curb effective advocacy of the general aviation viewpoint by virtue of its operation of Teterboro.

Petitioners say that there is a conflict between general aviation and the airlines for the use of limited airspace and aviation resources in the New York area. The governmental resolution of the conflict should be made, they contend, only after hearing fully and continuously the views of all interested parties, including general aviation. Petitioners argue, however, that ". . . Pan Am can and will exert its power as Teterboro's landlord to curb the free expression of general aviation's point of view" (Pet. Br. 29), and that the Teterboro agreement will enable Pan American ". . . to throttle effective dissent by large segments of the New York general aviation community to the adoption of policies favorable to the air carrier interests." (Pet. Br. 25). The premises of petitioners'

^{18/} Private operation of Westchester County Airport by a "wholly-owned subsidiary of Gulf Oil Corporation" under an agreement with the County of Westchester appears to work satisfactorily notwithstanding the fact that Gulf Oil operates for a profit and makes decisions affecting various categories of general aviation components. Service to White Plains, New York, Docket 19201, Initial Decision, p. 4 (February 27, 1969).

argument, that there is conflict and that there should be free expression in the resolution of the conflict, can be readily accepted. The unrelated conclusion that Pan American as "landlord" of Teterboro will dominate general aviation and prevent it from expressing its true viewpoint in the conflict over air space in the New York area is far-fetched and unsupported by the record.

The success of the "blackmail" scheme which petitioners believe Pan American will employ would depend on its ability to coerce the whole general aviation industry into silence, not only on the conflict over airspace, but also with respect to the coercion employed, and its ability further to maintain its impregnable position at Teterboro from which to continue its coercive tactics. Obviously, neither end is achievable. It is scarcely probable that Pan American as operator of Teterboro will be able to throttle NATA's exercise of its right to voice the views of its members in the New York area as well as throughout the rest of the nation. In its brief to the examiner NATA described itself as ". . . the largest trade association with respect to numbers of members and coverage of the interests in the aviation and air transportation industry devoted to the representation of commercial interests and operators." (R. 2753). There can be no doubt that NATA has the resources to make the voice of general aviation in the New York area heard. Further, Butler, which is one of the nation's largest fixed base operators, with 12 bases but no operations at Teterboro for Pan American to lever against, hardly seems disposed to

sit by in silence.^{49/} Other rich and powerful owners of business jet aircraft do not fit into the mold of persons who would readily be squelched in the expression of their views and the protection of their interests.

On the other hand as we have already shown, Pan American is severely limited by the agreement with respect to the actions that it can take in relation to users of Teterboro's facilities. The Port Authority has retained supervisory control and the right to cancel the whole agreement in the event there are violations. Furthermore, the Board has retained jurisdiction to impose additional conditions should that become necessary and, as has been noted before, the Federal Aviation Administration also may prevent discriminatory actions by Pan American in furtherance of its duties. It seems abundantly clear, therefore, that Pan American is in no position to undertake and maintain the "blackmail" scheme contemplated by petitioners.^{50/}

In short, the issue here is not one of free speech. Rather, the question is whether Pan American is in a position as a practical matter, or as a legal matter, to coerce general aviation. The record before the Court clearly indicates that it is not.

^{49/} As noted earlier (supra, note 37), Butler seems disposed to challenge every action which it deems an attempt by air carriers to encroach on its general aviation preserve.

^{50/} In these circumstances we need not consider the possible legal rights of users of Teterboro facilities if they are evicted or discriminatorily treated because of the exercise of their right of free speech. See Edwards v. Habib, : U.S. App. D.C. , 397 F.2d 687 (1968).

- II. The Board did not err in reviewing the initial decision without providing for the submission of briefs and/or oral argument since neither the statute, the regulations, nor a sound discretion required such procedure.

Pursuant to Reorganization Plan No. 3 of 1961 (75 Stat. 837, 49 U.S.C. 1324 note) the Board is authorized to delegate to a hearing examiner authority to decide a case so long as it retains "a discretionary right to review the action" of the examiner upon its own initiative or upon petition of a party or an intervenor "in such manner as the Board shall by rule prescribe." If discretionary review is not sought or it is declined, the examiner's action is "deemed to be the action of the Board" for all purposes. (For full text, see infra, p. 74). Implementing the statute, the Board prescribed a rule. Rule 28(d) of its Procedural Regulations provides for a shortened procedure for Board review of initial decisions.^{51/} Specifically, it authorizes the Board to issue an order upon review of an initial decision ". . . without further proceedings on any or all of the issues where it finds that matters raised do not warrant further proceedings."^{52/} The Board made such a finding here. (R. 3033-34). There is no doubt, therefore, that the appropriate statute and regulation empowered the Board to take discretionary review

^{51/} Procedural Regulations Preambles, PR-78, 28 Fed. Reg. 2898, March 20, 1963. This is consistent with the legislative history of the Reorganization Plan which indicates that it was intended to "permit a more expeditious handling of the Board's workload." Hearings Before a Subcomm. of the House Comm. on Government Operations, 87th Cong., 1st Sess. at 36 (1961).

^{52/} 14 C.F.R. 302.28(d)(1), infra, p. 75 .

in this case and to issue an opinion and order without granting the parties the right to file briefs or to be heard in oral argument.

The petitioners contend, however, that by failing to provide for the submission of briefs and/or oral argument upon review of the initial decision the Board violated §1004(a) of the Federal Aviation Act. Further, that even if such action did not violate the statute, the Board's action violated the purpose of the regulation which provides for this abbreviated review procedure and constituted an abuse of discretion as well. (Pet. Br. 55-57). These arguments are without foundation.

Section 1004(a) of the Act (infra, p. 73) provides that "in all cases heard by an examiner or a single member of the Board, the Board shall hear or receive argument on request of either party." Under this provision there is clearly no necessity for the Board to hear oral argument as the statute expressly says that Board shall "hear or receive argument." (emphasis supplied). Sisto v. Civil Aeronautics Board, 86 U.S. App. D.C. 31, 179 F.2d 47 (1949); Pan American-Grace Airways v. Civil Aeronautics Board, 85 U.S. App. D.C. 297, 178 F.2d 34 (1949); Walker v. Civil Aeronautics Board, 251 F.2d 954 (C.A. 2, 1958). And there is clearly no constitutional necessity for the Board hearing oral argument. Federal Communications Commission v. WJR, The Goodwill Station, 337 U.S. 265 (1949).

Furthermore, the statute does not specify the manner in which the Board is to receive argument. Here the Board received argument by taking review of the entire record, including the petitioners' briefs to the

53/ examiner, and their petitions for discretionary review. 54/ Moreover, as the Board pointed out, petitioners had still another opportunity, through their petitions for reconsideration, to set forth their arguments on the merits if the Board misconceived their positions. (R. 3035). It is true petitioners restricted their petitions for reconsideration to the absence of a further opportunity for submission of briefs or oral argument, rather than arguing the merits, but this was their own choice and they therefore have no ground for complaint.

It is plain that the Board would have acted well within its discretionary powers if it had declined review altogether. In that case, as the courts have uniformly recognized, the examiner's order would have become the order of the Board without any further briefs or argument to the Board. Air Line Employees Assn. v. Civil Aeronautics Board, C.A.D.C. No. 22,243, decided May 2, 1969; Capitol International Airways, Inc. v. Civil Aeronautics Board, ___ U.S. App. D.C. ___, 392 F.2d 511 (1968); Butler Aviation Co. v. Civil Aeronautics Board, 389 F.2d 517 (C.A. 2, 1968). There is no statutory or regulatory requirement, therefore,

53/ The fact that these briefs were part of the record before the Board and directed to the same issues as were before the Board distinguishes the situation from a review by this Court of a District Court proceeding. Cf. Pet. Br. 59-60.

54/ Of course distinctions can be drawn between petitions for review and briefs (Pet. Br. 56-57) but attention may equally be drawn to their similarities, as the Board did (R. 3035). Recently this Court pointed out, "We accept the procedure followed here of shutting off the petitioner without any further presentation because we think it manifest that the document denominated petition for intervention was also, in substance, a brief and written argument." Citizens for Allegan County, Inc. v. Federal Power Commission, C.A.D.C. No. 21,842, slip opinion, p. 15 (April 29, 1969).

that the Board receive argument additionally to that received from the briefs to the examiner, the petitions for discretionary review, and the petitions for reconsideration.

Petitioners contend, however, that by depriving them of an opportunity to file a brief or to present oral argument in the review proceedings the Board abused its discretion. They urge this result because this case was an important one in an area in which the Board is not expert, and that the deprivation went beyond what they assert is the avowed purpose of the rules.^{55/} They view the delay which might have ensued as insignificant, and cite a number of eminent jurists on the importance of oral argument (Pet. Br. 57-62). The Board gave detailed consideration to the arguments raised by petitioners on this subject in its Order on Reconsideration (R. 3033-39). We are convinced that a reading of its opinion on the subject will persuade the Court that no abuse of discretion was present here. Nevertheless, a few additional comments may be of assistance to the Court.

Petitioners' contention that the Board should have provided for the submission of briefs or oral argument because the case is "important" misses the point. The "importance" of a case is one of the criteria for determining whether to exercise discretionary review of a case (see infra,

^{55/} This contention misreads the quoted background materials (Pet. Br. 58-59). The Board said it would not use the abbreviated procedure "to deprive a party of the right to be heard on any pertinent issue which could reasonably be considered as subject to controversion." Here the Board did not find that there were no controverted issues, but it did say, with respect to the "right to be heard," "There was no such deprivation here." (R. 3035).

p. 75), but neither the rules nor this Court have made it a guide for determining whether to call for briefs or oral argument. Capitol International Airways, Inc. v. Civil Aeronautics Board, ____ U.S. App. D.C. ____, 392 F.2d 511 (1968). On the latter issue, the question is whether there is a "real need for further argumentation". (R. 3034). The Board's practice has been to omit briefs and oral argument even in important cases where there is no such need.^{56/}

Petitioners' contention that the Board should have called for briefs or oral argument because it has no expertise in general aviation matters suggests a course of action calling for the exercise of judgment, but it cannot bottom a charge of abuse of discretion. The judgment is one for the Board to make. Section 1001, 49 U.S.C. 1481, infra, p. 73. See City of San Antonio v. Civil Aeronautics Board, 126 U.S. App. D.C. 112, 374 F.2d 326 (1967) and cases cited therein. Clearly, its decision was within the realm of reasonableness, particularly because the Board was not only aware of petitioners' position but because, as the Board stated, "dispensing with further proceedings was and continues to be warranted by the exigencies of time". (R. 3036). There was no abuse of discretion here. Cf. Citizens for Allegan County, Inc. v. Federal Power Commission, C.A.D.C. No. 21,842, decided April 29, 1969.

^{56/} "For example, in cases involving the important question of control of Los Angeles Airways and New York Airways, respectively, by other air carriers, the Board reviewed initial decisions without further proceedings. Orders E-23268, E-23714 and 68-7-169". (R. 3034). See also Pan American World Airways, Inc., Order 68-7-169 (July 31, 1968).

CONCLUSION

For the foregoing reasons the Board's orders should be affirmed.

Respectfully submitted,

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May, 1969

APPENDIX

Relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 737, 49 U.S.C. 1301 et seq.:

TITLE I -- GENERAL PROVISIONS

* * * * *

DECLARATION OF POLICY: THE BOARD

Sec. 102. [72 Stat. 740, 49 U.S.C. 1302] In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

* * * * *

TITLE III - ORGANIZATION OF

AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR

* * * * *

EXPENDITURE OF FEDERAL FUNDS FOR CERTAIN AIRPORTS, ETC.

Airports for Other Than Military Purposes

Sec. 308. [72 Stat. 750, 49 U.S.C. 1349] (a) No Federal funds, other than those expended under this Act, shall be expended, other than for military purposes (whether or not in cooperation with State or other local governmental agencies), for the acquisition, establishment, construction, alteration, repair, maintenance, or operation of any landing area, or for the acquisition, establishment, construction, maintenance, or operation of air navigation facilities thereon, except upon written recommendation and certification by the Administrator that such landing area or facility is reasonably necessary for use in air commerce or in the interests of national defense. Any interested person may apply to the Administrator, under regulations prescribed by him, for such recommendation and certification with respect to any landing area or air navigation facility proposed to be established, constructed, altered, repaired, maintained, or operated by, or in the interests of, such person. There shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended.

* * * * *

TITLE IV - AIR CARRIER ECONOMIC REGULATION

* * * * *

CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

Acts Prohibited

Sec. 408. [72 Stat. 767, as amended by 74 Stat. 901, 49 U.S.C. 1378] (a) It shall be unlawful unless approved by order of the Board as provided in this section --

* * * * *

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

* * * * *

Power of Board

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: Provided, That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: Provided further, That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of the Interstate Commerce Act, as amended, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: Provided further, That, in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and determines that no person disclosing a substantial interest then currently is requesting a hearing, the Board, after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may determine that the public interest does not require a hearing and by order approve or disapprove such transaction.

* * * * *

METHODS OF COMPETITION

Sec. 411. [72 Stat. 769, 49 U.S.C. 1381] The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

* * * * *

POOLING AND OTHER AGREEMENTS

Filing of Agreements Required

Sec. 412 [72 Stat. 770, 49 U.S.C. 1382] (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

Approval by Board

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

* * * * *

Legal Restraints

Sec. 414. [72 Stat. 770, 49 U.S.C. 1384] Any person affected by any order made under sections 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

* * * * *

TITLE X—PROCEDURE

* * * * *

CONDUCT OF PROCEEDINGS

Sec. 1001. [72 Stat. 788, 49 U.S.C. 1481] The Board and the Administrator, subject to the provisions of this Act and the Administrative Procedure Act, may conduct their proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice. No member of the Board or Agency shall participate in any hearing or proceeding in which he has a pecuniary interest. Any person may appear before the Board or Agency and be heard in person or by attorney. The Board, in its discretion, may enter its appearance and participate as an interested party in any proceeding conducted by the Administrator under title III of this Act, and in any proceeding conducted by the Administrator under title VI of this Act from which no appeal is provided to the Board. Every vote and official act of the Board and the Agency shall be entered of record, and the proceedings thereof shall be open to the public upon request of any interested party, unless the Board or the Administrator determines that secrecy is requisite on grounds of national defense.

EVIDENCE

Power to Take Evidence

Sec. 1004. [72 Stat. 792, 49 U.S.C. 1484] (a) Any member or examiner of the Board, when duly designated by the Board for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Board. In all cases heard by an examiner or a single member the Board shall hear or receive argument on request of either party.

* * * * *

Judicial Review of Orders

Orders of Board and Administrator subject to Review

Sec. 1006. [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

* * * * *

Relevant provisions of Reorganization Plan No. 3 of 1961, 75 Stat. 837, 49 U.S.C. 1324 note:

CIVIL AERONAUTICS BOARD

SECTION 1. Authority to delegate - (a) In addition to its existing authority, the Civil Aeronautics Board, hereinafter referred to as the "Board", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Board, an individual Board member, a hearing examiner, or an employee or employee board, including functions with respect to hearings, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter; Provided, however, that nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Board shall retain a discretionary right to review the action of any such division of the Board, individual Board member, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Board shall by rule prescribe, Provided, however, that the vote of a majority of the Board less one member thereof shall be sufficient to bring any such action before the Board for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Board, then the action of any such

division of the Board, individual Board member, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Board.

* * * * *

PART 302 - RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

* * * * *

Sec. 302.28 Petitions for discretionary review of initial decisions; review proceedings.

(a) Petitions for discretionary review . (1) Review by the Board pursuant to this section is not a matter of right but of the sound discretion of the Board. Any party may file and serve a petition for discretionary review by the Board of an initial decision within 25 days after service thereof. Such petitions shall be accompanied by proof of service on all parties.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, Board rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the examiner, but which the petitioner proposes to argue on brief to the Board, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the Board or the Chief Examiner, petitions shall not exceed 20 pages including appendices and other papers

physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the Board.

(b) Answer. Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 15 pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he shall do so in a single document of not more than 20 pages.

(c) Orders declining review. Board orders declining to exercise the Board's right of review will specify the date upon which the examiner's decision shall become effective as the final decision of the Board. A petition for reconsideration of a Board order declining review will be entertained only when the order exercises, in part, the Board's right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of the Board in the review proceeding.

(d) Review proceedings. (1) The Board will exercise its right of review upon petition for review or on its own initiative when two or more Board members vote in favor of review. The Board will issue a final order upon such review without further proceedings on any or all the issues where it finds that matters raised do not warrant further proceedings.

(2) Where the Board desires further proceedings, the Board will issue an order for review which will:

(i) Specify the issues to which review will be limited. Such issues shall constitute one or more of the issues raised in a petition for discretionary review and/or matters which the Board desires to review on its own initiative. Only those issues specified in the order shall be argued on brief to the Board, pursuant to §302.31, and considered by the Board.

(ii) Specify the portions of the examiner's decision, if any, which are to be stayed as well as the effective date of the remaining portions thereof.

(iii) Designate the parties to the review proceeding.

* * * * *

DEPARTMENT OF TRANSPORTATION ACT

* * * * *

DECLARATION OF PURPOSE

Sec. 2. [80 Stat.931, 49 U.S.C. 1651] (a) The Congress hereby declares that the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources.

(b) (1) The Congress therefore finds that the establishment of a Department of Transportation is necessary in the public interest and to assure the coordinated, effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible; to encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation; to provide general leadership in the identification and solution of transportation problems; and to develop and recommend to the President and the Congress for approval national transportation policies and programs to accomplish these objectives with full and appropriate consideration of the needs of the public, users, carriers, industry, labor, and the national defense.

* * * * *

Sec. 6 [80 Stat. 937, 49 U.S.C. 1655] (c) (1) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Federal Aviation Agency, and of the Administrator and other officers and offices thereof, including the development and construction of a civil supersonic aircraft: Provided, however, That there are hereby transferred to the Federal Aviation Administrator, and it shall be his duty to exercise the functions, powers, and duties of the Secretary pertaining to aviation safety as set forth in sections 306, 307, 308, 309, 312, 313, 314, 1101, 1105, and 1111, and titles VI, VII, IX, AND XII of the Federal Aviation Act of 1958, as amended. In exercising these enumerated functions, powers, and

duties, the Administrator shall be guided by the declaration of policy in section 103 of the Federal Aviation Act of 1958, as amended. Decisions of the Federal Aviation Administrator made pursuant to the exercise of the functions, powers, and duties enumerated in this subsection to be exercised by the Administrator shall be administratively final, and appeals as authorized by law or this Act shall be taken directly to the National Transportation Safety Board or to the courts, as appropriate.

FEDERAL AIRPORT ACT

* * * * *

Project Sponsorship

Sec. 11. [60 Stat. 176, 75 Stat. 526, 78 Stat. 161, 49 U.S.C. 1110] As a condition precedent to his approval of a project under this Act, the Administrator shall receive assurances in writing, satisfactory to him, that—

(1) the airport to which the project relates will be available for public use on fair and reasonable terms and without unjust discrimination;

* * * * *

Relevant portions of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1 et seq.

* * * * *

Sec. 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: Provided, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity

is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: Provided further, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

* * * * *

Relevant portions of the Clayton Act, 38 Stat. 730, as amended, 15 U.S.C. 12, et seq.:

* * * * *

Sec. 7. [38 Stat. 731, as amended by 64 Stat. 1125, 15 U.S.C. 18] That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations.

engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: Provided, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 10 of the Public Utility Holding

Company Act of 1935, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary or Board.

* * * * *

Sec. 11. [38 Stat. 734, as amended by 48 Stat. 1102, 52 Stat. 1028, 64 Stat. 1125, 72 Stat. 943, 73 Stat. 243, 15 U.S.C. 21] (a) That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

* * * * *

360

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,602

NATIONAL AVIATION TRADES ASSOCIATION
and BUTLER AVIATION COMPANY,

Petitioners

v.

CIVIL AERONAUTICS BOARD,

Respondent

PAN AMERICAN WORLD AIRWAYS, INC. and
PORT OF NEW YORK AUTHORITY,

Intervenors

On Petition To Review Opinions and Orders
of the Civil Aeronautics Board

BRIEF FOR PETITIONERS

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 24 1969

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CLERK

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March 24, 1969



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Miller, Oral Argument, 9 J. of the Bar Ass'n of the D.C. 196 (1942)	61
Vanderbilt, A Unified Court System, 9 F.R.D. 635, 639 (1949)	62

*Cases or authorities chiefly relied upon are marked by asterisks.



UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,602

NATIONAL AVIATION TRADES ASSOCIATION
and BUTLER AVIATION COMPANY,

Petitioners

v.

CIVIL AERONAUTICS BOARD,

Respondent

PAN AMERICAN WORLD AIRWAYS, INC. and
PORT OF NEW YORK AUTHORITY,

Intervenors

On Petition To Review Opinions and Orders
of the Civil Aeronautics Board

BRIEF FOR PETITIONERS

ISSUES PRESENTED FOR REVIEW*

I. Whether the Board's decision to permit a major public airport of vital importance to general aviation to be turned over to the control of a large air carrier for a period of thirty years was based on reasonable and adequately supported findings and conclusions and on substantial evidence.

A. Whether the Board's conclusion that Pan Am, as operator of Teterboro Airport, would have no significant conflicts of interest

*This case has not heretofore been presented to this Court.

with general aviation was reasonable and supported by substantial evidence.

B. Whether the Board's conclusion that it is not contrary to the public interest, under the circumstances of this case, to permit Teterboro Airport to be operated by a private party for private profit was reasonable and supported by substantial evidence.

II. Whether the Board erred in finding that the agreement to turn over Teterboro Airport to Pan Am for thirty years would not create a monopoly and thereby restrain competition.

A. Whether the Board's conclusion that the anti-discrimination provisions of the Teterboro agreement and other remedies are sufficient to negate the anticompetitive features of the agreement was reasonable and supported by substantial evidence.

III. Whether the Board could properly rely on the undisputed need to improve Teterboro Airport as the only affirmative public interest consideration supporting approval of the agreement, when the evidence showed that this benefit would also be realized if the agreement were disapproved.

IV. Whether the Board violated the requirements of the Federal Aviation Act or abused its discretion in refusing to permit Petitioners to file briefs or present oral argument in this case.

STATEMENT OF THE CASE

This is a petition by the National Aviation Trades Association (NATA) and Butler Aviation Company (Butler Aviation) brought pursuant to Section 1006(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1486(a), to review two opinions and orders of the Civil Aeronautics Board. The first order under review approved, pursuant to Section 408(b) of the Federal Aviation Act, 49 U.S.C. §1378(b), an agreement between the Port of New York Authority (Port Authority) and Pan American World Airways, Inc., (Pan Am), under which Pan Am would operate Teterboro Airport, owned by the Port Authority, for a period of 30 years. (R. 2845-82). The second order denied petitions for reconsideration requesting the opportunity to submit full written briefs and present oral argument to the Board in connection with the issues decided in the first order. (R. 3033-39).

Parties to The Proceeding

The Port Authority is a body established by compact between the states of New Jersey and New York. (R. 123). Among its activities is the ownership and operation of Teterboro Airport and of the three air carrier airports serving metropolitan New York—Kennedy, La Guardia, and Newark. At the end of 1966, the Port Authority had total assets of \$1,841,825,000 including over \$230,000,000 in securities, cash, and time deposits. During 1966 the Port Authority had gross operating revenues of about \$190 million and operating expenses of about \$102 million (R. 1786).

Pan Am is one of the world's largest air carriers, conducting extensive round-the-world operations pursuant to various certificates of public convenience and necessity issued to it by the Board. As of December 31, 1966, Pan Am had assets in excess of \$1 billion. (R. 1507). Pan Am's total 1966 operating revenues exceeded \$840 million, and it enjoyed a net income in that year of \$83,734,000. (R. 1509). In addition to its air carrier operation, Pan Am engages in other commercial activities, including a Business Jets Division that markets Fan Jet Falcons, a high performance executive aircraft (R. 1468).

The nature of Pan Am's air carrier operations gives it a substantial interest in the New York area. Approximately 13% of Pan Am's 6 million passenger enplanements during fiscal 1966 were at Kennedy and Newark airports, serving the New York metropolitan area. Pan Am had more than 1,500,000 passengers enplaning or deplaning at the New York airports during that period (R. 1516). In addition to its plan to take over operation of Teterboro Airport, Pan Am is interested in the development and operation of a Stolport at 59th Street on the Hudson River and is leasing a heliport, which is located at 60th Street and the East River, from the City of New York. (R. 456-59). Pan Am also has had an operational and stock interest in New York Airways, a helicopter carrier that served the New York airports (including Teterboro), the roof of the Pan Am Building in midtown Manhattan, and other points in the New York area with the financial assistance of Pan Am. (R. 1464-67).

NATA is a trade association representing many relatively small individual companies in the general aviation services industry. (R. 189-90). The business activities of its members consist of the sale of aircraft fuel and lubricants, aircraft maintenance and repair, the sale and installation of communications and navigation equipment, operation of flight schools, sale of small aircraft and similar activities at large and small airports throughout the country. Butler Aviation is a company engaged in the aviation services industry, with facilities at 12 major airports throughout the United States, including one operated at La Guardia Airport pursuant to an operating agreement with the Port Authority. (R. 1405).

Teterboro Airport

Teterboro Airport is located in Bergen County, New Jersey, approximately five miles west of the George Washington Bridge, five miles northwest of the Lincoln Tunnel, and twelve miles by highway from Times Square in Manhattan. (R. 1864). Served by a network of superior highways, driving time from Teterboro to midtown Manhattan is approximately 20-25 minutes. (R. 2846). Teterboro was opened in 1917 and acquired by the Port Authority in 1949. The Port Authority has invested over \$10.5 million in the purchase, improvement and expansion of the airport. (R. 1864).

Teterboro Airport's facilities include two 5,000 foot runways, a control tower manned by FAA personnel, an instrument landing system, and radar. (R. 1418). These facilities make it, along with Newark, Kennedy, and La Guardia, the only airport in the Port of New York Authority area classified by the Tri-State Transportation Committee as a Class I "All Weather" airport. (R. 1412).¹

Teterboro's facilities and geographical location, together with the fact that it serves only general aviation (air taxis, corporate aircraft, private pleasure aircraft, flight schools, etc.), have led a consulting firm retained by Pan Am to characterize Teterboro as "the principal general aviation airport" in the New York metropolitan area. (R. 1089). It has

¹There are six other airports in the Port Authority area. None has a runway of 5,000 feet minimum length, none has ILS or radar, and only one has a control tower. (R. 1418)

been considered by Pan Am itself as presenting "about the sole solution" to the problem of developing general aviation facilities that could contribute to alleviation of congestion in the New York area. (R. 1690). Of the other general aviation airports in the New York metropolitan area, Pan Am's consultants have said that "virtually all . . . are inadequately equipped for handling large aircraft and large numbers of aircraft movements." (R. 1092).

The problem of air traffic congestion at major cities throughout the United States, and particularly in New York, has been a matter of concern to various governmental bodies and private interests. Among the steps taken to alleviate this condition has been an increase in the minimum landing fee at Kennedy, La Guardia, and Newark airports from \$5.00 to \$25.00 (R. 2957-60) and promotional efforts by the Port Authority to encourage general aviation users to select Teterboro rather than one of the air carrier airports (R. 1440-43, 1861-65). Increased use of Teterboro, to the extent it involves diversion of aircraft from the air carrier airports, is expected to alleviate congestion at those airports.

The Negotiations Between Pan Am and the Port Authority

In September 1964, Pan Am expressed an interest in Teterboro Airport to the Port Authority. Negotiations between Pan Am and the Port Authority with respect to Teterboro commenced in December 1964 and resulted, by August 1965, in a letter of understanding setting forth an agreement under which the Port Authority would turn over the operation of Teterboro to Pan Am (R. 399-401). However, further negotiations resulted in an impasse in September 1966, because the Port Authority at that time determined that the benefits it sought could be achieved "without transferring responsibility for the operation of the public facility, and without the legal, technical and financial complications inherent in such an arrangement." (R. 1537).

The Port Authority envisioned further negotiations looking toward making Pan Am a major tenant at Teterboro rather than the operator of the airport. (R. 1537). This approach was unsatisfactory to Pan Am, which wished to take over total operation and control of the airport. (R. 1571-75). Further negotiations were held in the ensuing year, with

the Port Authority finally acceding to Pan Am's basic approach. The definitive agreement between the Port Authority and Pan Am was executed on September 19, 1967, three years after initiation of negotiations. (R. 401).

The Agreement

The basic terms of the agreement call for the operation of Teterboro Airport by Pan Am for a period of thirty years, commencing upon completion of certain runway construction currently underway.² (R. 2846). Existing agreements between the Port Authority and current users of the airport are to be assigned to Pan Am (R. 612-13); Pan Am is to make all further investments in new facilities at the airport during the life of the agreement (except for funds made available by the Federal government) (R. 2847); and Pan Am will be entitled to collect all rentals and fees paid by users of the airport and to have overall supervision of all facilities and operations at the airport. In return, Pan Am is to pay the Port Authority an annual fee ranging from \$320,000 the first year to \$664,640 for the sixth through thirtieth years of the agreement, together with 10% of its gross receipts as airport operator in excess of \$5 million per year. (R. 585-89).

With respect to fees and charges at Teterboro Airport, section 35 of the agreement provides that Pan Am may modify any charges (the most important being landing fees) subject to no limitation except that charges may not be increased to an amount exceeding "the highest prevailing charges of a similar nature at other airports owned or operated by the Port Authority" without Port Authority approval. (R. 622).

Appended to the agreement is a 46 page set of rules and regulations that would govern Teterboro Airport at the time Pan Am takes over its operation. (R. 783-828). The regulations provide, *inter alia*, that "No person shall carry on any commercial activity at the air terminal other than aircraft operations without the consent of the Airport Operator."

²Section 41 of the agreement provides that it shall not become effective until after final Board approval and completion of judicial review proceedings, if any. (R. 625-26). It is possible, therefore, that the agreement will not be implemented until some time after completion of the runway construction.

(R. 788). They also provide that Pan Am's permission is required for numerous other activities at the airport, such as operation of jet or turbo-prop aircraft (R. 790), practice landings or take-offs (R. 791), and operations by aircraft of any type having an actual gross weight of over 100,000 pounds. (R. 782). Changes in the rules and regulations at Teterboro Airport can be made by the Port Authority only with the consent of Pan Am (R. 590), but additional non-conflicting regulations may be promulgated by Pan Am unilaterally. (R. 591).

At various places in the agreement, it is provided that Pan Am shall operate Teterboro as a public airport, with services and charges being provided on a fair, equal, reasonable and not unjustly discriminatory basis. (R. 583, 604, 616-17, 622). No formal procedures are established, however, for enforcing these undertakings. The agreement also provides that prior consent of the Port Authority is required for any subcontracts or other agreements for the use or occupancy of the airport entered into between Pan Am and third parties. (R. 593).

Proceedings Before the Board

Following execution of the agreement between the Port Authority and Pan Am, the latter filed an application with the Board on September 26, 1967, requesting a disclaimer of jurisdiction with respect to the agreement or approval pursuant to Section 408(b) of the Act. (R. 122-26).³ On December 28, 1967, the Board issued an order setting Pan Am's application for hearing and making Butler Aviation and NATA parties to the proceeding. (R. 207-14). The hearing commenced before a Board hearing examiner on March 19, 1968, and was concluded on March 22. Briefs to the Examiner were filed on April 12, and the Examiner issued his Initial Decision on May 10. (R. 2845-82). The Examiner found that the agree-

³On the same date, Pan Am filed with the Board a similar application relating to an agreement with the Fairchild Hiller Corporation under which Pan Am would have taken over the operation of Republic Airport, at Farmingdale on Long Island, for a period of up to 30 years. (R. 2-6). The question of approval of that agreement was consolidated for hearing with the Teterboro case. (R. 214). The Examiner found that the agreement for operation of Republic Airport by Pan Am should be disapproved because, *inter alia*, any benefits of the agreement would be outweighed by "the anticompetitive aspects of adding another increment towards Pan American's control of airports in the New York area." (R. 2878-79). No party petitioned for review of that portion of the Initial Decision, and the Board did not review it. (R. 2976A-2976B).

ment would not be inconsistent with the public interest and should be approved, subject to conditions which are of little materiality here.

NATA and Butler Aviation petitioned the Board for discretionary review of the Examiner's Initial Decision, insofar as it approved the Port Authority-Pan Am agreement for operation of Teterboro. (R. 2892-2923). On September 25, 1968, the Board issued Order 68-9-120, one of the orders here under review. The order took review and affirmed the Examiner's decision approving the Teterboro agreement.

The Board's review and affirmance of the Examiner's Initial Decision were "without further proceedings." In other words, the parties did not file briefs to the Board and were not permitted to present oral argument to the Board. The Board acted on the basis of its review of the record and the submission of petitions for discretionary review. The Board's summary disposition was made pursuant to Rule 28(d) of its Rules of Practice, which provides, in part, that "The Board will issue a final order upon such review without further proceedings on any or all issues where it finds that matters raised do not warrant further proceedings."

NATA and Butler Aviation filed petitions for reconsideration in which they requested the Board to afford them an opportunity to argue their case with full written briefs and/or presentation of oral argument. On December 5, 1968, the Board issued Order 68-12-25, the second of the orders under review herein, which denied these petitions for reconsideration.

On December 23, 1968, NATA and Butler Aviation filed a joint petition for judicial review of the Board's orders approving the agreement between Pan Am and the Port Authority for the operation of Teterboro Airport and denying the petitions of NATA and Butler Aviation for reconsideration. It is that petition that is now before the Court for decision.

SUMMARY OF ARGUMENT

1. By virtue of its location and quality of its facilities, Teterboro Airport is the dominant general aviation facility for the New York City market. It is one of the four largest airports serving New York City, and the only one devoted exclusively to general aviation. While general aviation can utilize the major air carrier airports in New York, it is being squeezed off those airports by increased rates and by restrictions imposed by the Federal Aviation Administration. Of the airports in the New York area devoted exclusively to general aviation, Teterboro alone is equipped to handle high performance executive aircraft, which constitute a separate and distinct market from small piston-engine aircraft used for pleasure and student flying. Outlying airports capable of accommodating high performance general aviation aircraft, such as those at White Plains and Islip, are too distant from the core area of downtown New York to be competitive in the market with Teterboro.

2. The agreement between the Port Authority and Pan Am for the operation of Teterboro Airport confers upon Pan Am practically unfettered control over rates, leases, rules and regulations. These extensive powers will permit Pan Am to dominate and control its general aviation tenants at Teterboro; in turn, because of the dominant role of Teterboro in New York's general aviation picture, control over Teterboro will afford Pan Am a dominant role in the entire general aviation industry in the New York market.

3. Because of Pan Am's status as an air carrier, serious conflicts of interest exist between it and the general aviation industry, whose fate would be entrusted to Pan Am's good graces with approval of this agreement. Pan Am will be in a position to use its power to suppress effective advocacy of the general aviation viewpoint when conflicts arise between the carriers and general aviation, thus seriously jeopardizing the process of democratic decision-making in this area of public controversy. The Board's opinion failed to deal adequately—indeed, to deal at all—with this serious issue.

4. Apart from the specific conflicts between Pan Am and other air carriers, on the one hand, and the general aviation community, on the

other, the agreement is contrary to the public interest because it turns over a vital public airport facility to a private party to be operated for its own private profit. The Board's opinion erroneously ignored or miscomprehended petitioners' arguments on this issue and failed to give adequate reasons in support of the conclusion that Teterboro could properly be turned over to private operation.

5. The agreement in question violates the first proviso of Section 408(b) of the Federal Aviation Act, because it creates a monopoly and thereby restrains competition. The restraints of competition arise in two areas. First is in the sale of high performance executive aircraft, a line of commerce in which Pan Am is presently engaged as exclusive sales agent for Fan Jet Falcons. This restraint of competition is possible because of Pan Am's power to seriously disadvantage or exclude from Teterboro Airport vendors of competing aircraft. The second area of competitive restraint is in the transportation of passengers between Teterboro Airport and the air carrier airports serving New York City for the purpose of making connections to or from air carrier flights. Pan Am would, if the agreement is approved, have the practical power to insure that such connecting flights are operated in a manner encouraging passengers going to points served by Pan Am to use Pan Am rather than a competitor.

6. In discounting petitioners' fears of predatory and anticompetitive practices by Pan Am, the Board relied primarily on the existence of anti-discrimination provisions in the Pan Am-Port Authority agreement and upon its own retention of jurisdiction. However, the evidence shows that such measures would not afford an adequate remedy to victims of abusive practices by Pan Am. The Board's opinion is deficient in its complete failure to deal with petitioners' contentions regarding the illusory nature of these safeguards.

7. The Board's decision to approve the agreement rested primarily upon its finding that Pan Am would develop Teterboro Airport and that development of Teterboro Airport would benefit the public interest by relieving air traffic congestion in the New York area. However, the opinion totally failed to recognize the fact that the same objectives would be accomplished by disapproval of the agreement, since the uncontroverted evidence showed that the Port Authority itself would develop the airport

if Pan Am were not permitted to do so. Thus, approval of the agreement entails no real public benefit, and, because of the serious potential adverse consequences of permitting Pan Am to control Teterboro Airport, the Board should have disapproved the agreement.

8. Finally, whatever the merits may be on each of the novel and complex issues in the proceeding, the Board violated the Federal Aviation Act and abused its discretion in utilizing summary review procedures and not permitting opponents of the agreement to present either briefs or oral argument to the Board.

ARGUMENT

I.

THE BOARD ERRED IN PERMITTING A MAJOR PUBLIC AIRPORT FACILITY OF VITAL IMPORTANCE TO GENERAL AVIATION TO BE TURNED OVER TO THE CONTROL OF A GIANT AIR CARRIER FOR A PERIOD OF THIRTY YEARS

The fundamental evil of the agreement approved by the Board is that it turns over Teterboro Airport, the most important general aviation facility in the New York metropolitan area, to the control of Pan Am, an air carrier with interests inherently hostile to those of the general aviation community. By doing so, the agreement gives Pan Am a stranglehold over general aviation activities in the nation's largest market.

A. Whoever Controls Teterboro Airport Assumes a Dominant Position in General Aviation in the New York Area.

It is the key role that Teterboro Airport will play for the foreseeable future for general aviation in the New York area that makes this agreement so alarming. Located only eight miles and 20-25 minutes from downtown Manhattan, and equipped with two 5,000 foot runways, a control tower, an instrument landing system, and radar, Teterboro Airport is capable of accommodating the full range of general aviation activities. (R. 1418, 1864). In fact, it is the only airport within the Port Authority area devoted exclusively to general aviation and adequately equipped for operations by high performance aircraft. As the Examiner put it, "Teterboro Airport is without question the best and most conveniently located airport

devoted solely to general aviation for general aviation travelers to and from Manhattan." (R. 2870).

Teterboro's potential dominance of general aviation in the New York area was spelled out in a study performed for Pan Am:

"In the New York metropolitan area Teterboro Airport is the principal general aviation airport, handling approximately 40% of all general aviation activities (Fig. 1)." (R. 1089).

"Teterboro Airport, which Pan American World Airways proposes to operate as a general aviation airport, is a strategically located facility. Manhattan falls almost entirely within a ten mile radius (Fig. 2); a circle with a 20 mile radius drawn around Teterboro encompasses all of New York City, southern Westchester County, all of Bergen and Essex Counties, and major portions of Morris, Passaic and Union Counties. This area contains the administrative offices of a large number of business organizations, many industrial facilities, and a major portion of the population of the New York Metropolitan Area." (R. 1092).

Three other airports in the Port Authority area can accommodate high-performance aircraft--La Guardia, Kennedy, and Newark. However, each is served with a heavy concentration of scheduled airline flights, so that strong pressures have developed to restrict general aviation activity at those airports severely.

These pressures have already resulted in actions that confirm the ascendancy of Teterboro as the New York area's prime general aviation airport. Effective August 1, 1968, the Port Authority raised minimum takeoff fees at Kennedy, La Guardia, and Newark from \$5.00 to \$25.00 during peak periods between 8:00 A.M. and 10:00 A.M. and between 3:00 P.M. and 8:00 P.M. No increase in Teterboro fees was made. (R. 2957-60).

In taking this action, the Port Authority expressly stated that it hoped to encourage

"Small private aircraft to cease their use of the three commercial airports during peak periods by flying at other

hours or using alternate general aviation airports in the metropolitan area.

"General aviation operations, such as air taxis, to use other general aviation airports, including Teterboro, as an alternate for La Guardia for air passengers with Manhattan origins and destinations." (R. 2958-59).

In addition, the Port Authority embarked on a promotional campaign designed to encourage general aviation to use Teterboro rather than one of the airline airports. (R. 1865). At the same time, the Air Transport Association, the trade association of the air carriers, launched a program designed to force general aviation activities off those airports currently served by the airlines. (R. 1447-49). In fact, the president of American Airlines has stated publicly that it is "inevitable" that general aviation must be displaced by airline activity at the major airports served by airlines. (R. 476).

In addition to the restrictive rate change implemented by the Port Authority, the F.A.A. has adopted a rule aimed at relieving congestion at Kennedy, La Guardia, and Newark, effective June 1, 1969, which would limit general aviation to ten operations per hour (five scheduled air taxi flights and five other general aviation operations) during peak times at the three airports. This contrasts with the 80 operations per hour that will be permitted to the airlines. 14 C.F.R. §93.121 *et seq.*, 33 Fed. Reg. 17896 (December 3, 1968), as amended, 34 Fed. Reg. 2603 (February 24, 1969).

There are, of course, other airports in the New York area in addition to the big four—Kennedy, La Guardia, Newark, and Teterboro. However, limitations either of geography or of facilities prevent any of them from affecting the dominant role of Teterboro for general aviation. See Part II(A), *infra*. None of the six other airports in the Port Authority area has a runway of 5,000 feet or longer, an instrument landing system, or radar, and only one has a control tower. (R. 1418). Two of the airports are expected to close shortly. (R. 1413).

Given the limitations of these other airports, they are not capable of serving high performance executive jet and turboprop aircraft. It is these

aircraft that constitute the prime market for fixed-base operators such as Butler Aviation in major metropolitan areas. They are utilized more hours of the year than small single-engine piston planes, they have more expensive and elaborate equipment, and they consume more fuel. (R. 1413). Moreover, the sales of these aircraft are growing rapidly, and their importance in the overall general aviation picture as contrasted with smaller aircraft is increasing. (R. 1420-24). Pan Am itself is primarily interested in the development of Teterboro to serve the high performance general aviation aircraft market. (R. 1626-28, 1630-35, 1715-24).

Located eight miles from midtown Manhattan and well-equipped to accommodate all types of general aviation activity, Teterboro is clearly in a class by itself. It is today by far the most important general aviation facility in the New York area, and it will become more so as general aviation traffic is forced off the major air carrier airports serving New York City and as the facilities at Teterboro are developed and improved.

B. Pan Am Will Have Practically Unfettered Control Over Rates, Leases, Rules and Regulations at Teterboro Airport.

In its negotiations with the Port Authority, Pan Am bargained for and won not merely the right to be a major tenant or even manager of Teterboro Airport, but the power to dominate and control Teterboro completely. It did not win this extensive power easily. In fact, after two years of hard bargaining, Pan Am and the Port Authority reached an impasse over the very issue of who was to control the facility. Pan Am's program for the airport required that control be conferred upon it over "development of all facilities and services at the airport other than the public landing areas." (R. 1572). The Port Authority, on the other hand, sought "to retain complete supervision and overall management responsibility of Teterboro" with "Pan American most welcome as a major tenant leasing certain acreage." (R. 1574).

Ultimately, of course, this issue was resolved in Pan Am's favor. The agreement gives Pan Am practically unfettered control over Teterboro. In effect, the Port Authority has ceded to Pan Am quasi-governmental powers to regulate New York's general aviation.

1. *Pan Am would have almost unlimited power to set rates at Teterboro.*

One of the key features that Pan Am bargained for and won was the right to "maintain control of the level of landing fees and other charges on the Airport". (R. 1603). The level of these rates and charges is vital to the profitability of Pan Am's operation of the airport and also to the welfare of the general aviation users and tenants. So long as Pan Am does not raise the fees above the level prevailing at other Port Authority airports at the time the agreement was executed (R. 2983), it has unfettered powers to change rates without the necessity of obtaining the consent of the Port Authority.

The magnitude of this power is illustrated by the minimum landing fees at Teterboro, which today are \$1.50. Under the terms of the agreement as approved by the Board, Pan Am could unilaterally raise this fee to \$5.00, an increase to more than triple the present level. Moreover, there is no limitation whatsoever on Pan Am's power to lower rates and charges. Thus, Pan Am would have the ability to follow the classic pattern of the monopolist, *i.e.*, to lower rates, or even to eliminate them, until it has attracted all of the business from its competitors (such as they are) and then raise them to almost any level the traffic will bear. (R. 1641).

2. *Pan Am will have almost unlimited powers over leases and franchises to operate at Teterboro.*

Since any aviation service business must be performed at an airport, it is impossible to be in such a business without an agreement with the airport operator. Although this agreement is usually referred to as a lease, it is actually a combination of a lease and an operating agreement granting a franchise to perform certain services on the airport. The typical agreement with a fixed-base operator will lease it one or more hangars, office and shop space, and a ramp area. It will also specify the particular uses to which that property may be put (*e.g.*, the sale of aviation fuel); thus, in effect, it grants the company a franchise to engage in certain types of business on the airport. (See, *e.g.*, R. 1587-88, 1869-95). The rent or fees payable to the operator of the airport typically will include a fixed rent based on the amount of space leased and the value of improvements

thereon, a payment for each gallon of fuel sold, and possibly a percentage of certain receipts other than from fuel sales. (R. 1406).

A lease and/or operating agreement is also necessary to engage in many other types of business activity on an airport, *e.g.* the sale of aircraft, air taxi operations, charter and other flight services, flying schools, *etc.* Therefore, the very existence of these businesses also depends on the ability to negotiate successfully with the airport operator. While each of the agreements, once successfully negotiated with Pan Am, would require the written consent of the Port Authority (R. 593), the Port Authority does not participate in negotiating the terms of the agreement and no formal procedures are available for the prospective tenant to approach the Port Authority and urge that he is dissatisfied with the agreement he has negotiated; also, of course, agreements that are not successfully negotiated would never be put before the Port Authority. In short, if the Port Authority-Pan Am agreement is upheld, no one will be able to enter into any business venture at Teterboro Airport except as a tenant of Pan Am on terms agreeable to Pan Am. (R. 1406-07).

3. Pan Am will have broad power to make and enforce rules and regulations.

Attached to the Teterboro agreement is a detailed set of regulations that will be in effect when Pan Am takes over the airport. These regulations were negotiated by Pan Am and the Port Authority, and they confer upon Pan Am as the airport operator extensive power over all who would use Teterboro Airport.⁴

⁴The following are a few examples of the rules that Pan Am is empowered to enforce. They illustrate the scope of its discretion in managing the airport:

"7. The Airport Operator* may prohibit aircraft landing and taking off at any time when, and under any circumstances under which the Manager deems such landing and take-offs likely to endanger persons or property, except for emergency landings.

"10. The pilot . . . must at all times comply with the lawful order, signal or direction of an authorized representative of the Airport Operator.*

"13. No jet or turbo-prop aircraft may land or take off at the air terminal without permission of Pan American World Airways, Inc.*

[continued]

The agreement provides that the Port Authority can only make changes in the rules and regulations governing Teterboro with Pan Am's consent. (R. 590). Pan Am therefore has a veto over any changes in rules that the Port Authority might deem necessary or appropriate. Moreover, the agreement permits Pan Am to "promulgate such additional rules and regulations relating to the governing or conduct of operations at the airport as *in its sole judgment* may be required for such purposes, provided the same are not inconsistent with the Rules and Regulations referred to above." (emphasis supplied) (R. 591).

4. *These extensive powers will permit Pan Am to dominate and control its general aviation tenants at Teterboro.*

The power that Pan Am will have over general aviation interests in the New York area, whose business and activities will perforce be focused at Teterboro because it will be the dominant general aviation facility, is thus extensive. Pan Am will have the power to franchise those operators who are in its good graces and to give them the most desirable locations on the airport property for the conduct of their business.⁵

Those who have incurred Pan Am's disfavor, on the other hand, may find unusual difficulty in negotiating an agreement with Pan Am for establishment of an operation at Teterboro. The long and involved nego-

"23. No aircraft having an actual gross weight of over 100,000 pounds, including passengers, cargo, fuel, equipment, etc. shall land, take off or taxi at the air terminal without permission of Pan American World Airways, Inc.*

"38. All charges due for the use of the air terminal shall be payable in cash unless credit arrangements satisfactory to the Airport Operator have been made in advance or permission has been secured for payment by check.

"40. The Airport Operator shall have authority to deny the use of the air terminal to any aircraft or pilot violating these Rules and Regulations or Federal Regulations." (R. 789-90, 792, 795).

*The terms "Airport Operator" and "Pan American World Airways, Inc." appear to be used interchangeably in the regulations.

⁵First, of course, it may be anticipated that Pan Am will reserve the choicest location for its own Falcon sales and service base.

tiations that always precede the conclusion of such an operating agreement, even under the best of circumstances, may bog down over numerous issues: the location of the space to be occupied; the improvement which the airport operator will be permitted or required to make; the uses to which the land and buildings can be put; the amount of rent and the method by which it is to be calculated; the term of the lease; the cancellation provisions; and the numerous other matters that need to be resolved. (R. 1405-07). It would not be difficult for Pan Am, while maintaining a facade of good faith negotiation, to sabotage such negotiations with any tenants that it does not favor.

Even if the company is successful in negotiating an agreement for the lease of space to conduct its business at Teterboro, it must be extremely careful to maintain Pan Am's good will thereafter. Most of the existing agreements at Teterboro permit the Port Authority to cancel on 30 days' notice without giving any reasons whatsoever for the cancellation. (R. 2433). This type of termination clause is in seven leases held by Atlantic Aviation, two leases held by the Teterboro School of Aeronautics, and two leases held by Humble Oil & Refining Company, as well as in leases held by Safair Flying Service, Richard J. Berlow & Company, and Radio Aircraft Company. (R. 1153-62). All of these lessees will be at the mercy of Pan Am for their continued existence.

Moreover, when the lease/operating agreement comes up for renewal, the company is in a far worse bargaining position than it was when it originally sought approval to operate on the airport. It then has a substantial investment in the facilities necessary to conduct its operation and has built up a going concern and goodwill value which will be lost if it is unable to renew its lease. It has also acquired a substantial number of employees who are dependent upon it for their livelihood, and it is conscious of its responsibility to provide for their welfare by insuring the renewal of its operating agreement.

The lessee may also be dependent upon the goodwill of the airport operator for a number of other essential items, such as permission to make repairs or improvements to its buildings and facilities. (*E.g.*, R. 1589-92).

Moreover, Pan Am's power to enforce the detailed regulations governing operations at Teterboro Airport gives it the opportunity to keep any operator who does not cooperate with it in "hot water" a great deal of the time and to reward those who cooperate by overlooking minor infractions of the rules.

Under these circumstances, the lessee naturally assigns top priority to maintaining a good working relationship with the airport operator and avoids if at all possible becoming embroiled in any controversy with the airport operator or otherwise antagonizing it. (R. 1407).

C. The Board Erred in Concluding That Pan Am as Operator of Teterboro Airport Would Have No Significant Conflicts of Interest with the General Aviation Community That It Would Dominate.

At the outset, it is important to emphasize that there are two things that are *not* at issue in this proceeding: First, this case does *not* involve the question of whether or not general aviation should be transferred from La Guardia, Kennedy, and Newark Airports to Teterboro Airport. That question will be decided in other ways by the appropriate governmental agencies and by negotiations between the airlines and general aviation users. However, this proceeding does involve the question of whether or not Pan Am should be given an unfair advantage, and the opportunity to bulldoze a solution to that problem, by controlling access to and use of general aviation facilities in New York.

Second, NATA and Butler Aviation do *not* oppose the expansion of general aviation facilities at Teterboro airport. We agree that there is a need for additional general aviation facilities in the New York area and therefore agree that Teterboro should be developed fully. The only question is whether that expansion and development should be *controlled by Pan Am*.

It is Petitioners' position that the development of Teterboro should be undertaken by a governmental agency such as the Port Authority or by some other impartial person. The Port Authority, which was established

by the States of New York and New Jersey for the specific purpose, among others, of developing and operating airports, has stated that it will continue to operate the Teterboro Airport and will make the necessary improvements in its facilities if this agreement is disapproved. (R. 2251, 2265). The Port Authority has the financial ability, as well as the experienced, capable, and efficient personnel necessary to conduct an outstanding airport operation. (R. 1786). If the Port Authority prefers that someone else perform this function, there are other capable organizations available to do the job. (R. 2600-05).

Therefore, the development of general aviation facilities should not be delegated to Pan Am or any other airline. Pan Am has a vital self-interest in the conflict between the airlines and general aviation users, and it would inevitably be motivated to develop and operate general aviation facilities under its control in the manner best suited to the needs of air carriers, rather than general aviation.

1. *A direct and increasingly hard-fought conflict exists between general aviation and the air carriers for limited air space and airport facilities.*

The airlines and the general aviation community have entered a period of dramatic confrontation over the allocation of scarce airport facilities and limited air space. With the continued growth that is anticipated in both general aviation and airline activities, their clash of interests may be expected to intensify with the passage of time. In the New York area, where the problem is most acute, battle has already been joined.

The position of the airlines on the allocation of airport facilities and air space has been clearly stated on many occasions. For instance, a statement was issued on July 23, 1968, by Mr. Stuart Tipton, President of the Air Transport Association, the trade association for the nation's scheduled air carriers, asserting the following:

"When a congestion crisis such as the one we now are experiencing occurs, it is this very public which suffers first and suffers longest. The usefulness of the air transporta-

tion system, therefore, is denied in the crisis to those who must depend upon it the most. Only a small segment of the population can afford to own and operate private aircraft.

"I must, therefore, urge that the government, through the FAA, protect the traveling public by a system of priorities at the more crowded terminals. These priorities should be applied whenever the demand for airway or airport capacity equals or exceeds the supply. The priorities, of course, would give precedence to transport aircraft carrying 100 passengers for instance, over that of a private aircraft carrying a handful of persons, or less." (R. 2956).⁶

In October 1967 Mr. George Spater, now President of American Airlines, expressed the same philosophy in a speech to the American Institute of Aeronautics and Astronautics:

"The question is not whether anyone should be displaced, because this is inevitable as we reach saturation; the question is whether those displaced should be a large segment of the public or a small segment . . . Under today's rules, there is nothing to prevent general aviation from successively preempting New York's three existing airports and then going on to preempt its fourth and fifth airports as they are developed, so that anyone who wants to get on a public plane in New York will have to go 100 miles from the city to board one.

"This is a condition which must be remedied if public air transportation is to survive." (R. 1452).

Several steps have already been taken towards restricting general aviation in the New York area. The first involved the increase in minimum landing fees at Kennedy, La Guardia, and Newark Airports from \$5 to \$25 during peak periods. This action, the calculated impact of which was to force a substantial segment of general aviation away from the air carrier airports, was first proposed by the Port Authority in November 1967. (R. 1432-35). It was the subject of extensive discussions between repre-

⁶Mr. Juan T. Trippe, Chairman of the Board of Directors of Pan Am, was a director of the Air Transport Association at the time this statement was issued.

sentatives of the general aviation community and the Port Authority. This proposal was also discussed with the airlines. Originally scheduled for implementation on January 1, 1968, the new fee schedule was at first postponed, but was placed in effect on August 1, 1968. (R. 2957-60).

The subsequent rounds of the battle were fought before the Federal Aviation Administration, which initially proposed, on September 5, 1968, a rule that would have excluded all general aviation from New York City's three air carrier airports during peak traffic periods. 33 Fed. Reg. 12580, adopted as 14 C.F.R. § 93.121 *et seq.*, 33 Fed. Reg. 17896 (December 3, 1968). This proposal was the subject of much controversy, including vehement protests by representatives of the general aviation community. In this instance, general aviation interests had some success, albeit extremely limited, in pleading their case before the FAA. The current version of the rule, adopted February 24, 1969, permits five air taxi operations and five other general aviation operations per hour at each of the three major New York airports. 34 Fed. Reg. 2603.

These are just the first encounters in the battle between general aviation and the airlines for access to airport facilities and freedom of flight in the New York area. The fight is certain to intensify and spread to new issues within the next 30 years. For example, the record also shows that there is a definite interrelationship between the air traffic patterns at Teterboro and at those airports. (R. 1576-83). As operator of Teterboro, Pan Am would have an important say in this matter. It would have a strong incentive to use its position to arrange or influence the air traffic rules and regulations in such a way as to favor airline traffic over general aviation. Pan Am itself recognized that it could (but the Port Authority would not) favor Teterboro traffic at the expense of Newark, where Pan Am's service is quite limited, or La Guardia, which Pan Am does not serve at all. (R. 1603).

There are no easy answers to this resource allocation problem, and future growth of the aviation industry will intensify the problem. It will require the utmost in wisdom, judgment and restraint for the airline industry, the general aviation users, and the governmental agencies involved to

reach a fair and equitable solution on an amicable basis.⁷ Accommodations and concessions may be required from all concerned with the problem. Permitting Pan Am to have a stranglehold on general aviation facilities in the New York area is not only unfair, but would inevitably inject bitterness, rancor, and discord into a situation that will be difficult to solve under the best of circumstances.⁸

⁷It must be recognized that there are definitely two sides to the air congestion problem. A Congressional committee has recently found:

"The general aviation segment of the aviation community has been criticized extensively and unfairly during the past year. Newspaper articles and editorials which have appeared decrying airport congestion have laid the blame in large part on general aviation. General aviation has been treated as the black sheep of the aviation community without regard to its importance in air transportation or to the rights of general aviation users to utilize the airways and airports equitably with commercial aviation."

The National Airport System: Interim Report of the Aviation Subcommittee of the Committee on Commerce of the United States Senate on Exploring the Needs, Problems, and Means Necessary to Insure the Continued Maintenance of an Adequate National Airport System, 90th Cong., 2d Sess., at p. 7 (1968).

⁸NATA and Butler Aviation would be concerned about a policy that would vest control of vital general aviation facilities in any major air carrier. The fact that this case involves Pan Am is especially troubling, however, in light of that carrier's long history of predatory and anticompetitive practices. See, e.g., *United States v. Pan American World Airways*, 193 F.Supp. 18 (S.D.N.Y. 1963), rev'd on jurisdictional grounds, 371 U.S. 296 (1963); *New York Airways Certificate Renewal*, Order E-23714, May 20, 1966; *South Pacific-Pan American Agreements*, 39 CAB 840 (1963); *Seaboard and Pan American, Blocked Space Agreements*, 39 CAB 832 (1963); *Pan American Acquisition of LACSA*, 35 CAB 343, 346 (1962); *Transpacific Route Case* 32 CAB 928, 984 (1961); *Pan American-Compania Mexicana Agreements*, 31 CAB 960 (1960); *Pan American World Airways, Control of Jets*, 31 CAB 913 (1960); *Pan American-National Agreement Investigation*, 27 CAB 611 (1958); 28 CAB 960 (1958); 31 CAB 198 (1960); 37 CAB 772 (1963); *New York-Florida Case*, 24 CAB 94, 107 (1956); *Reopened New York-Balboa Through Service Proceeding*, 20 CAB 493 (1954); *Chicago and Southern Air Lines-Pan American World Airways, Interchange Agreement*, 17 CAB 686 (1952); *Havana-New York Foreign Air Carrier Permit Case*, 14 CAB 399 (1951); *National Airlines-Pan American-Grace Airways Interchange Agreement*, 14 CAB 320 (1951); *North Atlantic Route Transfer Case*, 11 CAB 676 (1950); *Pan American Airways, Acquisition of Aeronaves de Mexico*, 9 CAB 947 (1948); *American President Lines Petition*, 7 CAB 799, 818, fn. 16 (1947); *Pan American Airways, Acquisition of*

2. *Pan Am's control of Teterboro will give it the power to curb effective advocacy of the general aviation viewpoint, and thus will interfere with fundamental aspects of democratic decision-making.*

Democratic governmental decision-making in our society is the product of a mixture of ingredients. Important among these, of course, is obedience to established rules of law and responsiveness to demonstrated social needs. Of commensurate importance, however, is the freedom of private interests whose welfare is affected by governmental action to engage in responsible advocacy of their position. In many instances, the actions of government represent a reconciliation of conflicting private viewpoints. The importance of free expression of these viewpoints is recognized by the core instrument of federal regulatory policy, the Administrative Procedure Act, which seeks to assure all interested persons adequate opportunity to be heard on the decisions that affect their lives.

The conflict between the air carriers and the general aviation community for access to the limited aviation resources of this country is a classical instance of conflicting private interests that have participated actively in the formation of government policy and that should continue to be free to do so. This case, of course, is not the appropriate forum for resolution by either the Court or the Board of this vital conflict. It does, however, raise the important issue of whether quasi-governmental rights, laden with economic power than can be utilized to restrain political and economic activity, should be conferred on a representative of one of these warring interests.

While this facet of the instant case does not fit precisely into the traditional mold of antitrust litigation, the same fundamental economic and social policy that antitrust law seeks to foster is at stake here. This basic policy was summed up a few years ago by the Supreme Court in *Northern Pacific Ry. v. United States*, 356 U.S. 1, 4, 78 S.Ct. 514, 517 (1958):

China National, 6 CAB 143 (1944); *Panagra Terminal Investigation*, 4 CAB 670 (1944); *Pan American Airways Acquisition of Aeronaves de Mexico*, 4 CAB 494 (1943); *Pan American Airways Acquisition of Aerovias de Guatemala*, 4 CAB 403 (1943); *Pan American Airways Acquisition of Lavery Airways*, 3 CAB 522, 527 (1942); and *Pan American-Matson Inter-Island Contract*, 3 CAB 540 (1942).

"The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, *while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.*" (emphasis supplied)

In this case, the nearly unfettered control that the agreement would vest in Pan Am over operations at Teterboro would radically alter the political and economic balance on the vital issues of allocation of aviation resources. Anyone who wishes to do business at Teterboro Airport—i.e., anyone who wishes to continue to play a significant role in the general aviation industry in New York—will have to operate at a Teterboro controlled by Pan Am. He is hardly likely to feel free to incur Pan Am's displeasure by vigorous espousal of the cause of general aviation, to the extent that cause conflicts with the interests of the air carriers and specifically of Pan Am. How could a lessee be outspoken in opposing the airlines' position on airspace and airport allocation when Pan Am can terminate his lease on 30 days' notice, with or without cause, or be down in his hangar conducting a "safety inspection" the morning after his position appears in the newspapers? In short, it is only reasonable to anticipate that this agreement will empower Pan Am to throttle effective dissent by large segments of the New York general aviation community to the adoption of policies favorable to the air carrier interests.

This evil is especially ominous because it will endure for thirty years, the term of the agreement between the Port Authority and Pan Am. It is impossible today to anticipate all of the areas of conflict that will undoubtedly arise between the general aviation community and the air carriers during that immense span of time—immense at least in terms of the extraordinarily rapid development of technology in modern society, and notably in the aviation industry. Surely the most visionary enthusiasts could not have predicted in 1939 the startling changes that have occurred in the aviation industry between that time and the present or anticipated with any precision the kinds of problems with which the industry has

been confronted during that span. So, for the years until the start of the 21st century, no one can say what the precise nature of the general aviation-airline conflict will be.

All that can be said with some certainty is that there will be a conflict and that it will be manifested in numerous different ways as conditions change. And whatever the conflict may be, Pan Am will always be there, astride the most important general aviation facility in the nation's most important market. Pan Am will be the single largest factor with which the general aviation community will have to contend. It is an act of surpassing faith—certainly not of reason—to assume blandly that Pan Am will deport itself in the operation of Teterboro over the next thirty years as a dedicated servant of the welfare of the general aviation community. This, however, is what the Board assumed in approving this agreement.

The conflict of interest between Pan Am and the general aviation community is a problem even though many of the important decisions affecting the general aviation-air carrier conflict will be made by public bodies such as the Port Authority and the F.A.A. As noted above, decisions made by public bodies in our system of government are taken only after consideration of the positions expressed by various interested segments of the general public and the industry being subjected to regulation. In order for this system to function properly, it is essential that all who have an interest be free to express it and to urge by all lawful means the adoption of regulations tailored to their needs.

In the context of the general aviation-air carrier conflict, this means that members of the general aviation community should feel free to advocate positions and actions that may, in many instances, be contrary to important goals of Pan Am and the other air carriers. By controlling Teterboro, however, Pan Am will control the lifeline of much of New York's general aviation, which will inevitably tend to reduce if not cut off entirely effective expression of viewpoints favoring general aviation and antithetical to the interests of air carriers.

The recent decision of the Second Circuit in *ABC Air Freight Co. v. C.A.B.*, 391 F.2d 295, 302 (2d Cir. 1968), makes it unmistakably clear

that the Board has a strong obligation to examine carefully those situations in which a participant in one form of transportation is about to be placed in conflict with a competing form of transportation. The *ABC Air Freight Case* involved the question of whether the Board should permit motor carriers entry into the air freight forwarding business. The Court admonished the Board to proceed with care in authorizing such a development, noting the great size of the motor carriers as compared to existing air freight forwarders (comparable to the great size of Pan Am as compared to members of the general aviation community) and the likelihood of serious conflicts of interest.

In the *ABC-ITT Merger Case*, the Federal Communications Commission was recently presented with a case having conflict of interest aspects parallel to those present here. One of the primary bases on which the three dissenting commissioners would have disapproved the merger was "the potential conflict of interest between the business interests which comprise ITT and ABC's broadcasting responsibility to the public, especially in news and public affairs." 7 FCC 2d 245, 293 (1966). See also *id.* at 263-66, 293-304; 9 FCC 2d at 613-19 (1967). Just as ITT's status as an international conglomerate with far flung and diverse interests highly sensitive to political considerations raised serious doubt about its ability to serve the public interest impartially as owner of a major communications network, so Pan Am's vast stake in its air carrier operations casts equally great doubts upon its ability to serve the general aviation public fairly and impartially in its role as operator of New York's most important general aviation facility.⁹

Not only must the Board consider this conflict of interest as a "public interest" factor under Section 408(b) of the Act, but it is also rel-

⁹In a similar situation some years earlier, the Commission promulgated a rule to prohibit television networks from also participating in the representation of television stations in procuring spot advertisements. Although the Commission found that there had been no abuses by the networks in their dual role, it instituted the regulation nevertheless because of the potential conflict of interest between the sale of network advertising and of spot advertising. *Network Representation of Stations in National Spot Sales*, 27 F.C.C. 697 (1959), *aff'd sub nom. Metropolitan Television Co. v. F.C.C.* 289 F.2d 874, 110 U.S. App. D.C. 133 (1961).

evant to the antitrust issues. In *American Crystal Sugar Co. v. Cuban-American Sugar Co.*, 259 F.2d 524 (2d Cir. 1958), the court refused to allow a company which favored the cane sugar side of an "underlying conflict of interest in the industry" to acquire control of a company manufacturing beet sugar. See also the decision of the lower court, 152 F. Supp. 387, 393 (S.D.N.Y. 1957).

3. *The Board's opinion failed to deal adequately with the conflict of interest issue.*

Petitioners advanced the foregoing contention most vigorously before the Examiner and the Board. (R. 2681-86, 2900-02). However, the Board disposed of the entire issue in the following brief paragraph:

"Even if there were a conflict between airlines and general aviation resulting from congestion at the major New York metropolitan airports, there nevertheless would be no incentive for Pan American to operate Teterboro in a manner which would be detrimental to general aviation. With respect to the operation of the Teterboro Airport, the interests of Pan American and general aviation, as well as the public interest, are parallel; that is, the fullest development of Teterboro Airport for general aviation in a manner which will provide relief of congestion at the major New York metropolitan jetports." (R. 2986-87).

The adequacy of the foregoing analysis of this problem is crucial to the validity of the Board's entire opinion, because of the manner in which the Board shrugged off the argument regarding potential anticompetitive abuses flowing from Pan Am's operation of Teterboro:

"While it may be that such power of control would provide an opportunity to engage in practices which could to a limited extent adversely affect a limited segment of general aviation, in the absence of substantial conflicts of interest between Pan American as an airport operator and Pan American's air carrier and other activities, it cannot be assumed that such power of control would result in any significant restraint on competition or other practices contrary to the public interest." (R. 2984).

The Board's analysis of this problem is wholly inadequate and gives no indication that it was even aware of the nature and scope of the problem. The Board's underlying premise, that Pan Am and general aviation have parallel interests in seeing Teterboro developed as a first class facility, is scarcely holy writ to be plucked from the sky. Rather, it is a dubious conclusion that is not established by evidence of record and does not adequately consider the possibility that full development of Teterboro will not always be seen by the airlines as being in their self-interest. General aviation traffic shares the crowded skies over New York City with airline flights. Teterboro, being so close to the city, affects the traffic pattern at the other airports. (R. 1576-83). Thus, it is by no means inconceivable that the airlines, including Pan Am, will wish to restrict the development of Teterboro in certain respects at some point in the future.¹⁰

Even supposing that the Board was correct in speculating that Pan Am and general aviation would both wish to see optimum development of Teterboro, the point is not truly responsive to the fundamental issue. General aviation and the carriers are not really in conflict over the proposition that reliever airports should be developed to serve general aviation; they are in conflict over whether general aviation should be forced off other facilities, should be burdened with onerous regulations designed to restrict the volume of general aviation operations, and should be given inferior approach and landing patterns in congested areas. It is these vital issues over which dispute now rages, and regarding which Pan Am can and will exert its power as Teterboro's landlord to curb the free expression of general aviation's point of view.

The Board's approach also ignored the fact that, within the next thirty years, there are certain to be strong conflicts between various

¹⁰The Board places considerable weight, in this connection, on the fact that Pan Am will have a substantial investment at Teterboro and will therefore have an incentive to develop the facility. (R. 2980). However, with transport revenues exceeding \$840,000,000 in 1966 and growing rapidly every year (R. 1509), Pan Am's stake in its air carrier operations is so huge that it dwarfs the \$15-\$20 million investment that Pan Am may make in Teterboro. The relatively small Teterboro investment, therefore, will most assuredly be managed to the extent possible in such a way as to conserve and promote Pan Am's vastly greater air transportation investment.

segments of the general aviation industry—*e.g.*, high performance aircraft vs. light aircraft; itinerant operations versus student flights; etc. As will be noted in the next section of this brief, Pan Am is already strongly aligned on one side of this conflict of interest, since it sells high performance executive aircraft, and, as the airport operator, would make more profit by maximizing their activities.

The Board's opinion gives no recognition to the existence of these problems. It gives no recognition to the fact that all sorts of new conflicts may arise during the thirty year life of the agreement. By failing to give any indication whether the Board actually considered the fundamental problems raised in opposition to the agreement, the decision failed to meet the standard enunciated in the *ABC Air Freight* case, *supra*, that "the Board must make adequately supported findings either that the suspected conflict of interest does not exist or that important public advantages justify disregarding it." 391 F.2d at 303. The Board certainly did not make the former finding, and, as will be discussed in Part III, *infra*, the Board's findings on the latter issue were also inadequate.

To sum up, the canary and the cat may both agree that they prefer a gilded cage, but this is hardly sufficient justification to permit the cat to reside in the cage with the canary.

D. Wholly Apart from Conflicts Between Air Carriers and General Aviation, the Board Erred in Permitting a Major Airport Facility Such As Teterboro To Be Operated by a Private Party for Private Profit

Even supposing general aviation and the air carriers were not locked in a fierce struggle over the allocation of limited aviation resources in the New York area, the Board's action in approving the agreement would still be contrary to the public interests that the Board is obligated to uphold. The strategic public importance of Teterboro Airport and the important role that the operator of that airport will necessarily play in numerous decisions affecting the welfare of the aviation community, the traveling public, and, indeed, the general public in New York City, make it essential that management of Teterboro remain in public hands.

One of the principal reasons that Teterboro should not be turned over to Pan Am is that, under Pan Am's aegis, it will necessarily be operated in a manner designed to maximize Pan Am's profits, a consideration not necessarily identical with the public interest. Pan Am has stated in this case that it entered into the Teterboro agreement for "sound business reasons, and with the expectation of reasonable long-range financial returns to Pan American and its stockholders." (R. 422). In an unguarded moment, Mr. Najeeb Halaby, Senior Vice President of Pan Am, expressed this in more realistic terms. He stated bluntly in response to an inquiry relating to Pan Am's plans for Teterboro, that Pan Am "is not a foundation for general aviation, but a profitable, private enterprise and, of course, we intend to keep it so." (R. 1639).

This position is only natural. Pan Am would be remiss in its responsibilities to its stockholders if it did not bend all efforts to the quest for the highest possible financial return on its investments. However, commendable as this motivation may be in the ordinary conduct of private enterprise, it is in this case bound to result in higher rates for the airport's tenants and users than would be likely under Port Authority management. Also, Pan Am is much less likely than the Port Authority to encourage activities at the airport that are not substantial revenue and profit producers, but that may have fringe public benefits.

The second major evil in private operation of this important public facility inheres in the fact that quasi-governmental powers are necessarily conferred upon the operator of such a public facility. Thus, just as there is a conflict between the air carriers and general aviation over limited aviation resources in the New York area, so there is certain to be a conflict between different segments of the general aviation community itself. For example, as the facilities at Teterboro prove insufficient in any way to accommodate all the needs of air taxi operators, fixed base operators, business aircraft, flight schools, and personal pleasure flying, Pan Am will have the major role in deciding which of these conflicting segments should be excluded from Teterboro or limited in the scope of their activities at the airport.

One of the best illustrations of this potential conflict is the question of limitations on local flying or light plane traffic. A number of the docu-

ments subpoenaed from Pan Am's files indicate an intention on its part to either limit or eliminate such types of traffic:

"Pan American will maintain direct control of the limiting of light plane traffic, as will be required for the proper development of the Airport." (R. 1603).

"As recognized in the Tri-State Committee report of March 1966, local flying will have to be carefully monitored and ultimately eliminated or restricted." (R. 1605).

"An acceptable means of phasing out the light plane traffic at TEB, as TAMS projects, must be found in order to accommodate the projected build-up of heavier business aircraft traffic." (R. 1551).

It also appears that Pan Am intends to preclude "touch and go" training operations for light aircraft, but to permit them for heavier aircraft such as the Fan Jet Falcon, which it sells. (R. 1692).

Pan Am has a strong incentive to phase out light plane activity and to favor operations of larger aircraft. For one thing, it has a direct self-interest in the sale and operation of Fan Jet Falcon aircraft, and it naturally wishes to insure that nothing interferes with the utilization of Teterboro by such aircraft, including training and demonstration flights. Furthermore, larger aircraft produce substantially greater revenues in terms of landing fees, maintenance expenses, fuel requirements and other sources of revenue. As collector of landing fees and as a landlord with a percentage interest in the gross revenues of its tenants, revenue production must be one of Pan Am's dominant considerations. (R. 1425-28, 1598-1602, 1625-26, 1715-24).

In contrast, a public body such as the Port Authority would not necessarily have revenue production and profits as its primary goal. It would be free to weigh all public interest factors in the balance. In fact, its witness testified that it would attempt to serve all aspects of general aviation. (R. 2254). This is not to say that the public interest requires that light plane activity be protected at Teterboro, or that it requires the opposite. However, this is the sort of decision that should be in the hands of an impartial public body and not of a private company motivated pri-

marily by the quest for profits.¹¹ The users of the airport are entitled to fair and impartial treatment, since over \$10 million of public funds have been invested at Teterboro and additional funds are expected from the F.A.A.

The Board's opinion completely misconstrued the thrust of Petitioners' arguments against vesting Pan Am with power to determine the use of Teterboro Airport by various segments of the general aviation community. The Board dismissed this argument with a conclusion that Pan Am's approach, limiting light plane activity and student flights in favor of operations with heavier aircraft, "is the one that is consistent with the public interest."¹² (R. 2989-90). How far the Board's response missed the mark may be seen from the following excerpt from Butler Aviation's Brief to the Examiner:

"We would like to make it clear that we do not expect the Board to make a decision in this case as to whether it is or is not of public interest for any particular type of traffic to be restricted at these airports. We do believe, however, that it is quite clear that Pan American should not be given the power to make such decisions which are of vital concern to the general aviation industry, particularly when the airlines and general aviation are in open conflict as to the use of air space and airport space. If decisions of this nature are to be made, as they well may have to be, they should be made by an impartial governmental body and not by an airline which is operating an airport for its own private profit." (R. 2697).

¹¹ Apart from the ability to discourage light plane activity, the regulations to be administered by Pan Am at Teterboro give it the authority to prohibit any operations with student pilots at the controls (R. 791); they require Pan Am's consent before operations with STOL aircraft weighing more than 12,500 pounds may be conducted at Teterboro (R. 584); and they give Pan Am power to make numerous other decisions regarding the type of activities that will be fostered or discouraged at Teterboro. See note 4, at p. 15, *supra*.

¹² The Board could not properly make such a finding—even if it had the technical qualifications to do so—since this was not an issue in the case.

In short, it is impossible to tell from the Board's opinion what view it has, if any, on the critical issue actually raised by Butler Aviation in the above-quoted passage.

The question of whether and under what circumstances the operation of public airports should be turned over to private parties for private profit—particularly where the private party involved is both an air carrier and a seller of one particular type of aircraft, with potential conflicts of interest with the tenants and users of the airport—is an important one requiring careful evaluation. The policy established by the Board in this proceeding will, if it stands, open the door to widespread air carrier control of the most important general aviation facilities throughout the United States.

The importance of this problem merits careful consideration; the Board gave the matter short shrift. In effect, the Board declined to “interfere with the Port Authority's judgment as to the appropriate method for operation of the airport, absent a showing that such method would be detrimental to the public interest.” (R. 2981). By merely stating that the desire of a party to a Section 408 agreement that the agreement be implemented constitutes a basis for approval, the Board has improperly shifted the burden of making a public interest showing onto the opponents of the agreement.¹³ and has in effect abdicated its regulatory responsibility under the Act. It is the Board's statutory responsibility to exercise its *own* judgment in determining the “public interest” under Section 408, and it should have done so here.¹⁴

¹³The Board has generally recognized that the burden of showing that an agreement is in the public interest is on the applicants. See, e.g., *Mutual Aid Pact Investigation*, 40 C.A.B. 559, 579-80 (1964); *Airfreight Forwarder Investigation*, 21 C.A.B. 536, 558-59 (1955); cf. *Lehman Bros. Interlocking Relationships Case*, 15 C.A.B. 656, 676 (1952).

¹⁴In discussing the propriety of private operation of a public airport (R. 2981), the Board threw in a reference to Section 2(b)(1) of the Department of Transportation Act, 49 U.S.C. § 1651(b)(1) (1966), which states that the establishment of the Department is necessary in part “to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible . . .” This language was obviously directed to maintaining the principle that the nation's transport carriers should remain privately owned. We are unable to find one iota of evidence in the legislative history to suggest that Congress intended by means of this language to encourage governments to turn over the operation of public airports to private interests.

Again, as with the treatment of Petitioners' argument relating to the impact of the agreement on the conflict between general aviation and the air carriers, the Board's decision on this important issue does not measure up to the standards required by Section 8(b) of the Administrative Procedure Act. Not only does the Board's opinion give no adequate statement of the reasons or basis for its rejection of Petitioners' argument that the quasi-governmental responsibilities inherent in operation of Teterboro should not be vested in an air carrier, but it actually gives no indication of whether the Board considered the question at all. On this ground, if no other, the case should be remanded to the Board for further proceedings. *ABC Air Freight Co., Inc. v. C.A.B.*, 391 F.2d 295 (2nd Cir. 1968); *North-east Airlines, Inc. v. C.A.B.*, 331 F.2d 579 (1st Cir. 1964).

E. At a Minimum, the Board Should Have Considered Imposition of a Condition Requiring that only the Port Authority Could Set Rates, Grant and Terminate Leases, and Establish Rules and Regulations

If Teterboro is to be turned over to Pan Am for thirty years, the Board should at least have taken steps to insure that basic and vital governmental functions are performed by an impartial government agency. For example, there is no conceivable reason why Pan Am should have the power to cancel leases on thirty days' notice, with or without cause. The Board made no findings on NATA's proposal that such vital functions should be performed solely by the Port Authority and gave no reason for rejecting it. (R. 2993).

Pan Am has literally hundreds of millions of dollars invested in the airline business, even though the routes it flies, the fares it charges, and other important activities are closely regulated by the Civil Aeronautics Board. There is no reason why there should not be equally stringent regulation of its control over the airport, particularly since there are over \$10,000,000 in public funds invested in it. The Court should at least remand to the Board for findings on this issue.

II.

**THE BOARD ERRED IN FINDING THAT THE AGREEMENT TO
TURN OVER OPERATION OF TETERBORO TO PAN AM FOR A
PERIOD OF 30 YEARS WOULD NOT CREATE A MONOPOLY AND
THEREBY RESTRAIN COMPETITION**

The first proviso of Section 408(b) of the Federal Aviation Act, 49 U.S.C. § 1378(b), absolutely prohibits the Board from approving any "lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition. . . ." By its agreement with the Port Authority, Pan Am would obtain a monopoly of the Teterboro Airport itself and, because of Teterboro's unique importance, a monopoly over general aviation airports in the New York area capable of accommodating high performance aircraft. The creation of this monopoly will enable Pan Am to restrain competition in the sale of high performance executive aircraft and in the transportation of passengers between Teterboro and the New York City air carrier airports for connections with air carrier flights.

**A. The Board Erred in Finding that the Agreement Would Not
Result in the Creation of a Monopoly within the Meaning of
the Proviso to Section 408(b).**

Petitioners and the Board agree that there are two elements to be satisfied in order for the first proviso to Section 408(b) to come into play—there must be a monopoly created, and there must be a resulting restraint of competition. The Board's opinion paid scant attention to the first element, finding that "the question as to whether there is a technical creation of a monopoly under the agreement becomes somewhat academic" in light of the finding that there is no substantial restraint of competition resulting from the agreement. (R. 2990). The opinion reflects no independent analysis of the monopoly question, but merely a statement that "we agree with the examiner that approval of the agreement will not result in the creation of a monopoly." (R. 2990).

The nature of the power over facilities and operations at Teterboro that will be conferred upon Pan Am is that of a monopolist. As discussed in Part I(B), *supra*, Pan Am will have broad latitude in the unilateral establishment of rates, and no person may engage in a business at Teterboro

without first negotiating an agreement with Pan Am. Moreover, Pan Am is charged with the enforcement of rules and regulations at Teterboro, it is empowered to promulgate new regulations, and it has a veto power over any changes in the initial regulations agreed to by it and the Port Authority. Since control over prices and over entry into business are the classic components of monopoly power, Pan Am obviously has a monopoly, at least insofar as Teterboro Airport itself is concerned. In Petitioners' view, this suffices for purposes of Section 408, since Teterboro is itself a significant market.

Moreover, the geographical location and physical facilities of Teterboro make it the dominant general aviation airport serving New York City and the only one reasonably suited to accommodating all forms of general aviation activity. Thus, even if the monopoly afforded Pan Am over Teterboro itself is not sufficient to satisfy the statutory requirement, Teterboro's status as the only airport serving general aviation exclusively, capable of accommodating high-performance aircraft, and located within a 25 mile radius of midtown Manhattan, affords it such prominence among New York area general aviation airports that the agreement must be held to confer a monopoly of general aviation airports in the New York area upon Pan Am.

The Board relied on the finding of the Examiner, who identified several airports in the New York area (that he admitted "are not as satisfactory as Teterboro") and concluded that "their availability indicates that there is not a monopoly in Teterboro Airport with respect to service to Manhattan." (R. 2870-71). This conclusion, however, was wholly lacking in analysis of the evidence relating to the alternative general aviation airports. In fact, there is no substantial evidence to support the Examiner's conclusion.

Next to Teterboro, the closest airports to New York available for any substantial volume of general aviation operations, and mentioned by the Examiner as possible alternatives to Teterboro, would be Morristown Municipal, Spring Valley, Republic, Westchester, and MacArthur. The first three are devoted exclusively to general aviation; the latter two also serve air carriers. None is truly a viable alternative to Teterboro for general aviation users from the New York City core area.

Morristown Municipal. Located 23 miles from Times Square, Morristown Municipal is not an all-weather airport; it lacks instrument landing facilities or adequate runways. (R. 518-19). Vague claims by Pan Am in its exhibits that "plans have been made" for providing improved facilities at Morristown Municipal were accepted by the Examiner, although no evidence was presented as to the status of those plans or the date when, if ever, they would be implemented.

Spring Valley. Located 24 miles from Times Square, Spring Valley is also wholly inadequate today, is subject to the same uncertainties regarding improvements as Morristown Municipal, and is intended to accommodate "the present and future needs of Rockland and Southern Orange Counties and adjoining area". (R. 556). It is not intended to serve New York City.

Republic. This airport, at Farmingdale, Long Island, is currently not equipped to handle high performance aircraft. It is located 29 miles and approximately 55 minutes' driving time from downtown Manhattan. (R. 416).

Westchester. Located in White Plains, this airport is 26 miles north of Times Square. (R. 2870). For a number of reasons, it is not truly competitive with Teterboro as a general aviation facility serving the Manhattan core area.¹⁵ Foremost among these is the surface traffic congestion of highways around New York. Also, Westchester (and all the other airports here discussed) is seriously inferior to Teterboro in lacking convenient taxi, bus, and limousine service to downtown Manhattan, all of which are available at Teterboro. (R. 1442, 1668).¹⁶

¹⁵Pan Am itself plans to move the headquarters for its Fan Jet Falcon activities from the Westchester Airport, where it is currently located, to Teterboro, obviously because of Teterboro's greater convenience to downtown New York. (R. 438-39, 1593-94). Indeed, Pan Am today brings its Falcons from White Plains to La Guardia on numerous occasions during the course of a year to provide demonstration flights for prospective customers, and Mr. Trippe, Chairman of the Board of Pan Am, has the company Falcon aircraft flown from Westchester to La Guardia when he is traveling. (R. 2567-68).

¹⁶That the Board considers White Plains to serve the residents of Westchester County rather than New York City is evident from the fact that it is named as a sep-

MacArthur Field. Located at Islip, Long Island, forty miles east and more than an hour's driving time from Manhattan (R. 518), MacArthur Field is obviously not a meaningful alternative to Teterboro. The Board has in another proceeding recognized that the Islip airport serves Suffolk County and eastern Nassau County, and does not serve New York City. *Allegheny Airlines, Segment 8 Renewal and Route Realignment Investigation*, Order E-25847 (October 17, 1967).

A Port Authority survey of Teterboro patrons demonstrated that neither Westchester, MacArthur, nor any of the general aviation fields is a practical alternative to Teterboro. When asked their first choice for an alternate airport, 51.5% of those responding designated La Guardia and 24.6% Newark. Westchester was the choice of only 1.5% and MacArthur of only 0.8%. These airports even ranked below "would not have made the trip," which was the answer of 2.3%! (R. 1674).

The Examiner's finding is also contradicted by the views expressed by Pan Am and its consultants. The latter have said of other general aviation airports in the New York metropolitan area that "virtually all . . . are inadequately equipped for handling large aircraft and large numbers of aircraft movements." (R. 1092). Pan Am itself considers Teterboro to present "about the sole solution" to the problem of developing general aviation facilities that could contribute to alleviation of congestion in the New York area. (R. 1690). Clearly, as general aviation is squeezed off the three air carrier airports serving New York City, it will of necessity turn to Teterboro as the dominant available facility serving the city. Given the narrow definition of relevant market area adopted by the courts in antitrust cases, see *United States v. Grinnell Corp.*, 384 U.S. 563 (1966), and the universally recognized proposition that one need not control all of a market in order to have a monopoly, *American Tobacco Co. v. United States*, 328 U.S. 781 (1946); *Sunkist Growers, Inc. v. Winckler & Smith Citrus Prod. Co.*, 284 F.2d 1 (9th Cir. 1960); *United States v. Aluminum*

arate point on the certificate of Mohawk Airlines, that no other carrier has been permitted to serve Westchester Airport in implementation of authority to serve New York City (See Order E. 26711, p. 3, fn. 4 (April 25, 1968); Order 68-10-115 (October 1968)) and that the Board is currently in the midst of the *Service to White Plains Case*, Docket 19201, which is specifically designed to consider new service to five mid-western cities from Westchester Airport. Order E-25913 (November 2, 1967).

Co. of America, 148 F.2d 416, 424 (2d Cir. 1945); *United States v. Eastman Kodak Co.*, 226 Fed. 62, 79 (2d Cir. 1915), the requisite ingredients for a finding of monopoly are present in Pan Am's dominance of Teterboro. The finding that the agreement creates no monopoly therefore can not stand.

B. The Board Erred in Finding That Pan Am's Monopoly at Teterboro Would Not Enable It To Restrain Competition in the Sale of High Performance Executive Aircraft.

Pan Am is the exclusive United States distributor of the Fan Jet Falcon aircraft, a high-performance aircraft marketed in competition with a limited number of other models. The record shows that Pan Am will make Teterboro the headquarters for its Falcon activities if the agreement is approved. (R. 439, 1593-94, 2997).

The creation of a monopoly for Pan Am at Teterboro will restrain competition in the sale of high performance executive jet aircraft in the New York area. Because of this, the agreement falls within the condemnation of the first proviso of Section 408(b) and should have been disapproved. High performance executive aircraft represent a significant line of commerce. They have greater seating capacity and higher speeds than small single-engine piston aircraft and thus require more services. They also have more expensive and elaborate equipment and consume more fuel. (R. 1413). To the customer, their vastly superior operating characteristics and substantially higher price separate them from smaller piston models. Both the Examiner and the Board, in dealing with this subject, did not question the reasonableness of identifying high-performance executive jet aircraft as a separate line of commerce. (R. 2872, 2987). Similarly, New York City, which enjoys the greatest concentration of business, professional, and financial activity in the entire world, represents a reasonable market area for purposes of this analysis. (R. 1419). Again, neither the Board nor the Examiner seriously questioned this proposition.

There are many ways in which Pan Am, through its domination of Teterboro, can restrain competition in the sale of high-performance executive aircraft. For example, it has the power to reserve the best available piece of land at the airport for the sale and servicing of the Falcon

aircraft. It can also, as a practical matter, choose the spot—if any—that will be assigned to a company wishing to compete with Pan Am in this business through a Teterboro facility. In fact, through utilization of the techniques described in the testimony of Butler Aviation's president (R. 1406), Pan Am could well succeed in ultimately excluding from Teterboro all competitors in this particular line of commerce.

The anti-competitive consequences do not end with the question of the location of competing enterprises at Teterboro Airport. Once located, any competitor of Pan Am would find itself in the uncomfortable position of competing with its landlord, upon whom it is dependent for many services, for the right to improve its facilities, and ultimately for the renewal of its lease and operating rights.

The Board's opinion recognizes the possibility that Pan Am may become the exclusive distributor of high-performance executive aircraft at Teterboro, but finds that this would not "result in any substantial restraint of competition in the sale of such aircraft" because the location of the hangar base for demonstrator aircraft would not have any impact on the competitive sales of such aircraft. (R. 2988).

This conclusion, based on unsubstantiated representations by Pan Am, is contrary to common sense. In the first place, more is at stake than merely the location of the hangar base for demonstrator aircraft. If a New York based company decides to purchase an executive jet aircraft and is considering the Falcon along with competitive models, Pan Am as monopolist at Teterboro will have substantial advantages. It can insure that there are Falcon maintenance facilities, operated either by it or by someone licensed to maintain Falcon aircraft, on a prime location at the airport. Some if not all of its competitors may find themselves unable to offer comparable advantages.¹⁷ With the limitations on operations at La Guardia, Kennedy and Newark, most customers located in Manhattan will wish to base their aircraft at Teterboro, and the superiority of

¹⁷The President of Atlantic Aviation, which is now in business at Teterboro and which is a distributor of competitive executive jet aircraft, testified that the rentals proposed by Pan Am would be too high to permit profitable operations by his company. (R. 2551-52, 2872). High rentals charged by Pan Am to itself would not, of course, impair its competitive posture.

Falcon maintenance facilities would be a substantial competitive advantage. It is nowhere considered by the Board.

This is not a mere fantasy. No less a source than the Vice President of Pan Am's Business Jets Division commented as follows upon a proposal submitted by Atlantic Aviation to Pan Am in contemplation of the latter's take-over of Teterboro:

"Atlantic apparently wants an exclusive agreement to provide services at Teterboro. Since Atlantic is DH 125 and Gulfstream distributor it is easy to visualize where a Falcon owner would be on a priority list for service."

Accordingly, it was recommended that Pan Am "retain present plans to appoint two maintenance/service operators at Teterboro, one of which will be capable of performing major Falcon services." (R. 1583).

Moreover, the ability to base demonstrator aircraft at Teterboro, which the Board so minimizes, can be an important sales advantage. With the restrictions on Kennedy, La Guardia and Newark, the nearest available alternative airports will be Westchester or Islip. The inconvenience of basing demonstrator aircraft so far from a customer is evidenced by the fact that Pan Am itself brings its Falcons from White Plains, where they are currently based, to La Guardia on frequent occasions for the purpose of taking prospective customers on demonstration flights. (R. 2567).¹⁸

Finally, the Board's analysis of this issue adverts to the fact that "The President of Atlantic Aviation, a fixed-base operator which is presently engaged in the sale, *inter alia*, of competitive jet aircraft at Teterboro, expressed no concern with respect to Pan American's operation at Teterboro . . ." (R. 2988). It was improper for the Board to draw this inference, because the Examiner prevented interrogation of this witness designed to bring out his reaction to the possibility of a Pan Am monopoly at Teterboro. (R. 2548-58).¹⁹

¹⁸ As for the availability of airports elsewhere in the United States, this is hardly equivalent to a New York City airport in selling to the New York City market.

¹⁹ It must also be borne in mind that Atlantic holds eight leases at Teterboro, most of which Pan Am will have power to cancel on 30 days' notice, with or without cause. (R. 2433).

It is conceivable that the anti-competitive practices envisioned herein would not actually be instituted by Pan Am during its thirty year management of Teterboro. But the underlying antitrust theory does not require proof of the existence of predatory practices, which could not be proved in advance of a merger and might be difficult to prove even while they are occurring, because they are done surreptitiously. Disapproval of an agreement that creates the ability to engage in anti-competitive practices is necessary in order to thwart "such practices in their incipiency." *F.T.C. v. Procter & Gamble*, 386 U.S. 568, 577 (1967).

C. The Board Erred in Finding That Pan Am's Monopoly of Teterboro Would Not Result In Restraining Competition In The Transportation Of Passengers Connecting To Air Carrier Flights

Pan Am would also have the opportunity to restrain competition in air transportation by controlling the flow of general aviation passengers at Teterboro connecting to the airlines. Pan Am's approach toward such traffic is shown by its past relationship with New York Airways. In the *New York Airways Certificate Renewal Case*, TWA requested the imposition of a restriction to prevent Pan Am from using its monopoly over the heliport on the roof of the Pan Am Building to gain an unfair share of New York Airways' traffic for itself. Pan Am answered to the effect that it had built the heliport at great expense, and that, if another airline would like to make similar arrangements, it would be free to build its own facility. (R. 1464).

The Board concluded that it "does not consider that Pan American is entitled to exercise its proprietary rights to secure a monopoly over use of the heliport and does not intend to permit this result," and therefore imposed restrictions designed to prevent Pan Am from preferring its own traffic. (R. 1465). Despite this action, the only operations ever conducted by New York Airways between the roof of the Pan Am Building and an air carrier airport have been those supported by Pan Am to Pan Am's terminal at Kennedy Airport. The only operations conducted by New York Airways between the Teterboro Airport and the Kennedy Airport were also those supported by Pan Am to Pan Am's terminal at Kennedy. (R. 1466). It is also significant that Pan Am owns 28.4% of the outstanding stock in New York Airways. (R. 1467).

In addition to operations by New York Airways off the roof of the Pan Am Building, Pan Am has announced plans to obtain control of other New York airports, a Stolport on West 59th Street and an East 60th Street Heliport. (R. 456-59). The Teterboro agreement thus fits into a pattern of efforts by Pan Am to acquire control of subsidiary airports in the New York area—a development which would place Pan Am in a position to direct the flow of passengers using helicopter, STOL, and air taxi flights from these subsidiary airports to the air carrier airports for airline connections. The record reveals that there is already substantial volume of general aviation traffic connecting to the airlines in the New York area. (R. 1518-22). Even more important, this volume of traffic is certain to increase rapidly in the near future because of rapid expansion of air taxi service and of the executive aircraft market, and because of the diversion of general aviation activity away from Kennedy, La Guardia and Newark Airports. It is not hard to imagine which air carrier Pan Am would encourage this traffic to use.

With the unfettered control of Teterboro that would be conferred upon Pan Am by its agreement with the Port Authority, it could use the techniques already described to exclude air taxi or helicopter services designed to provide connections to the flights of other airlines, while encouraging such services between Teterboro and the Pan American terminal at Kennedy or the Pan American gate at Newark. While such services would theoretically be available to all connecting passengers, only Pan Am's passengers would be able to check in at Teterboro and check their baggage through to their ultimate destination, and only Pan Am's passengers would be spared the inconvenience of going from the Pan Am terminal at Kennedy to the facility of some other carrier.

The Board found no potential restraint of competition in this area. It relied for this conclusion on the provisions in the agreement against discriminatory operation of Teterboro (to be discussed in part II(D), *infra*) and on the fact that only a limited proportion of Teterboro's traffic presumably connects with Pan Am's overseas and foreign scheduled services. The Board concluded that "an attempt to provide a service limited to accommodating this traffic would not be economically

feasible; and that Pan American would have no incentive to violate the anti-discrimination provisions of the Agreement by doing so." (R. 1989).

The Board's analysis of this problem is completely unrealistic. Naturally the services for general aviation-airline connecting passengers would not be limited to passengers connecting with Pan Am's scheduled services. No one ever suggested that they would. However, for passengers traveling to a point served by Pan Am, the advantage of using Pan Am rather than TWA or one of Pan Am's other competitors would be great. And, from Pan Am's standpoint, the number of passengers that it would have to divert from other carriers in order to make it worthwhile to underwrite services to its terminal and exclude connecting services to other carriers' terminals would be few, because of the large revenue generated by the average Pan Am passenger.

The Board should have recognized the error of its analysis, since it has approved agreements under which Pan Am has paid New York Airways millions of dollars in subsidy to attract this very type of traffic to Pan Am. As indicated above, the Board found it necessary in that instance to impose conditions to prevent discrimination by Pan Am. (R. 1465).²⁰

D. The Board's Conclusion that the Anti-discrimination Provisions of the Agreement and Its Own Retention of Jurisdiction Negate the Anticompetitive Effects of the Agreement Is Unreasonable and Unsupported by Substantial Evidence.

As noted above, the Board's analysis of the contentions that Pan Am's control of Teterboro would lead to practices in restraint of competition was unusually skimpy and unresponsive to the arguments advanced by Petitioners. The principal reason for this apparently was the Board's conclusion that the alleged anticompetitive effects of the agreement would "be effectively precluded by the provisions of the agreement providing for

²⁰Subsequent to the filing of the record in this proceeding with the Court, certain events have occurred and have come to the attention of Petitioners which, in Petitioners' view, demonstrate the incorrectness of the Board's findings and conclusions with respect to this issue. On February 27, 1969, Petitioners filed with the Board a Motion to Reopen the Record for the purpose of receiving this additional evidence. That Motion was opposed by Pan Am, and the Board has not acted on it at the time of this writing.

fair, equal and not unjustly discriminatory operation of the airport." (R. 2978). This is a refrain that recurs often in the Board's opinion. (R. 2982-83, 2985, 2988-89, 2993).

Again, however, the opinion gives no evidence that the Board considered Petitioners' contentions that the anti-discrimination provisions of the agreement, while perhaps suitable for paving the road to perdition, afford no realistic and meaningful assurance that Pan Am will not engage in predatory and anticompetitive practices. On the contrary, the evidence plainly shows that the right of the public to fair and even-handed administration of the airport would be a phantom right without any practical remedy.

In Part I(B), *supra*, it has been demonstrated that Pan Am has extensive power to control general aviation activities at Teterboro Airport, which arises out of its power to control rates, leases, operating franchises, and rules and regulations. The combined effect of these powers is to give Pan Am the ability to control entry into general aviation activities at the airport; to limit, regulate, and control those activities; and even to squeeze out existing operators who displease Pan Am.

Certainly reliance can not be placed on Pan Am's bland assurances that it will operate the airport in a non-discriminatory manner. If this type of assurance were to be accepted as adequate, there would be no justification for the antitrust laws. The public would simply rely on the assertions of a monopolist that it would not act in an unfair or predatory manner.

Neither the policies of our antitrust statutes nor the court decisions implementing them take such a naive approach. Recognition is accorded to the simple fact of life that if the opportunities for predatory practices exist they will inevitably be pursued, because of the pressures on management of private enterprise to maximize profits.

In *F.T.C. v. Procter & Gamble*, 386 U.S. 568 (1967), the Court of Appeals had concluded that the Commission's finding of illegality had been based on "treacherous conjecture," "mere possibility" and "suspicion," and that "there was no evidence that Procter & Gamble at any time in the past engaged in predatory practices or that it intended to do so in the future." This is strikingly similar to the Board's language rejecting Peti-

tioners' contentions in this case.^{20a} (R. 2978). The Supreme Court rejected this approach in no uncertain terms:

"Section 7 of the Clayton Act was intended to arrest the anticompetitive effects of market power in their incipiency. The core question is whether a merger may substantially lessen competition, and necessarily requires a prediction of the merger's impact on competition, present and future. See *Brown Shoe Co. v. United States*, 370 U.S. 294, 82 S.Ct. 1502, 8 L.Ed.2d 510; *United States v. Philadelphia National Bank*, 374 U.S. 321, 83 S.Ct. 1715, 10 L.Ed.2d 915. The section can deal only with probabilities, not with certainties. *Brown Shoe Co. v. United States*, supra, 370 U.S. at 323, 82 S.Ct. at 1522; *United States v. Penn-Olin Chemical Co.*, 378 U.S. 158, 84 S.Ct. 1710, 12 L.Ed.2d 775. And there is certainly no requirement that the anticompetitive power manifest itself in anticompetitive action before § 7 can be called into play. If the enforcement of § 7 turned on the existence of actual anticompetitive practices, the congressional policy of thwarting such practices in their incipiency would be frustrated." *Id.* at 577.

The principal instrumentality for enforcing Pan Am's promises of fair dealing is to be the Port Authority, which, over the life of the agreement, stands to receive millions of dollars in payments from Pan Am for permitting it to operate Teterboro Airport. Petitioners do not wish to impugn the honesty or the good intentions of the Port Authority. However, intentions aside, the Board had before it no substantial evidence that the Port Authority would be able effectively to enforce Pan Am's obligation of good behavior. Thus, there is no evidence of the existence of any procedures whereby the Port Authority might investigate charges of improper practices brought against Pan Am. Nor does the agreement confer upon the Port Authority the power to order Pan Am to rectify any specific

^{20a} At the same time that the Board was casually dismissing Petitioners' fears of anticompetitive practices by Pan Am as "speculative, conjectural and unrealistic," it was declining review of the Examiner's determination that the agreement for operation of Republic Airport by Pan Am should be disapproved because, *inter alia*, any benefits of the agreement would be outweighed by "the anticompetitive aspects of adding another increment towards Pan American's control of airports in the New York area." (R. 2878-79). Certainly, however, the "anticompetitive aspects" of Pan Am's control of Teterboro are immeasurably greater than they would be at Republic, which is an inferior and less important facility.

instances of misconduct. Moreover, the only remedy provided by the contract is termination of the agreement (R. 602), a right that the Port Authority will surely be extremely reluctant to exercise.

The record reflects the Port Authority's narrow view of its powers or obligations to control Pan Am's actions at Teterboro. When counsel for one of the intervenors before the Board attempted to cross-examine the Port Authority's witness about the rates Pan Am proposes to charge (R. 2240), counsel for the Port Authority objected, stating that "If Mr. Yodice feels it is discriminatory I suggest that is a matter to be discussed with Pan Am." Port Authority counsel argued that the question of the discriminatory nature of rates was not relevant to the question of whether or not "this would be an airport open to the public". (R. 2242) Moreover, the Port Authority has established no standard for approving or disapproving leases and operating agreements negotiated by Pan Am and has no proposal to establish any. (R. 2260-61).²¹ Thus the Port Authority cannot be counted on to curb Pan Am's actions, if indeed it has any practical power to do so.

The Board also relied on the F.A.A. and on its own retention of jurisdiction to curb any anticompetitive actions that Pan Am may undertake. (R. 2985). However, these remedies suffer from the same fundamental failings. The complex nature of the bargaining process by which the right to establish a business at the airport is acquired, expanded, or renewed, the manner in which the airport's rules and regulations are enforced, and the myriad daily incidents of the landlord-tenant relationship at an airport all give Pan Am broad scope for disguising unfair or predatory practices and make it extremely difficult to establish a claim of discriminatory or unjust conduct. Moreover, any general aviation tenant or user of Teterboro who feels that he has been unjustly treated by Pan Am is going to be extremely reluctant to bring a complaint before the Port Authority, the FAA, or the Board. He will recognize that, no matter how valid his complaint, it is human nature for the persons complained against to become upset with the implication that they are being unfair. If the victim of Pan Am's discriminatory practices is a tenant at Teterboro, he will be extremely reluctant to incur Pan Am's ill will by raising such charges, since he knows that he must continue to live on the airport and that Pan Am's control

²¹Questioning on this important point was cut off by the Examiner.

over rates, leases, operating rights, rules and regulations gives it the power to make life extremely uncomfortable and even untenable for him. It would be grossly unfair to place general aviation users in such a precarious position.

It must also be recognized that the vindication of legal rights is an extremely costly proposition, and even a *winning* legal action can be an expensive and hollow victory. General aviation is not interested in the right to bring legal actions. All that it wants is a fair and impartial landlord that does not have interests vitally in conflict with its own interests. Certainly this is not too much to ask at an airport in which over \$10 million of public funds are invested.

The Board's failure to undertake any critical evaluation of the utility of the anti-discrimination provisions in the agreement and of its own retention of jurisdiction renders its decision inadequate. If the Board wished to rely on the existence of remedies that would prevent or cure anticompetitive practices by Pan Am, it had the duty to evaluate the challenge to the adequacy of the remedies and to make reasonable, factually supported findings on the issue. 5 U.S.C. § 557(c). Its failure to do so requires that its decision be reversed and remanded for a more careful evaluation of this issue.

III

THE BOARD ERRONEOUSLY RELIED ON ILLUSORY PUBLIC INTEREST BENEFITS IN APPROVING THE AGREEMENT

The affirmative basis for the Board's finding that the Teterboro agreement is in the public interest is that there is "a critical problem of congestion at the three major New York Metropolitan Airports serving scheduled airline operations," and "that the development of Teterboro Airport would serve to attract general aviation away from these airports, and accordingly will contribute toward the relief of such congestion." (R. 2978). The Board further found that Pan Am had submitted a detailed plan for the development of Teterboro, proposing an investment of between \$20 and \$25 million, and that, although Pan Am made no undertaking with respect to any specific improvements that it would make at Teterboro if the agreement is approved, it would in fact invest a substantial sum of money in the facility. (R. 2979-80).²²

²²There is no reliable evidence in the record to support this conclusion, since Pan Am refused to commit itself to any particular program of development (R. 2875), and

However, in balancing this benefit against the potential detriments of the agreement, the Board overlooked uncontroverted evidence of record showing that comparable improvements of Teterboro would be made by the Port Authority if the agreement were disapproved. *In fact, approval of the agreement entails no public benefits in terms of relief of congestion or development of adequate airport facilities in the New York area over and above those that would come about were the agreement disapproved.*

The Board's opinion never discusses the consequences of disapproval. The evidence, however, makes it clear that nothing would be lost by disapproval save the aggrandizement of Pan Am's power over subsidiary airports and general aviation activity in the New York area. Mr. John R. Wiley, Director of Aviation for the Port Authority, testified as follows:

"Q Has the Port Authority made a plan as to how they will improve and operate the airport other than the runway-taxiway improvement should the agreement be disapproved?

"A If the agreement should be disapproved, we do not have any specific plans that we could pull off the shelf at this moment as to how the airport would be improved and developed, but we would immediately get busy to produce such plans and make such plans in order to keep the airport open for the purposes stated.

"Q: Would a proposed development such as the TAMS proposal be something like what the Port Authority might do?

"A It could be similar to that. Each consultant has his own pride of authorship or each firm has its own pride of authorship, so it might be different.

"Q If the agreement is disapproved, the Port Authority would then seriously consider extensive development.

"A Oh, yes. Absolutely.

"Q Does the Port Authority have sufficient resources to achieve such a development should it become necessary?

"A Yes, I am sure we do . . ." (R. 2251).

* * *

"Q On page 6 you say if the agreement is disapproved the Port Authority will continue to operate Teterboro Airport.

the Examiner's rulings prevented exploration of whether or not the proposal prepared by Pan Am's consultants would be economically feasible. (R. 2552, 2570-73, 2575-81).

Can we assume that the Port would do the best job it could within its ability?

"A Yes.

"Q And back on page 3 you say at the bottom of the page, 'The sooner Teterboro is utilized to its maximum extent by general aviation aircraft, the better.'

"I assume that statement applies whether Pan American makes improvements or whether the Port Authority makes improvements.

"A I would say that's true, yes." (R. 2265)

The Port Authority, which operates four major airports, has the financial ability, as well as the experienced, capable, and efficient personnel necessary to conduct an outstanding airport operation.²³ (R. 1786, 2256-57). Moreover, there is no evidence to suggest that disapproval of the agreement would result in any material delay in completion of improvements at Teterboro. On the contrary, Mr. Wiley testified that it would require two to three years for the Port Authority to *complete* substantial improvements to the terminal operations (R. 2253), whereas the report prepared by Pan Am's consultants indicates that it would take that long or longer for Pan Am to complete its developments. (R. 1120-22).

The real mystery in this case is why the Port Authority, having the responsibility and the resources to insure sound development of Teterboro Airport, decided to let Pan Am do it. The record contains no satisfactory explanation. In fact, the only reason advanced by the Port Authority for its decision is a belief that Pan Am "is qualified to promote and fully develop Teterboro Airport over the shortest interval of time." (R. 1853, 2252). In view of the fact that negotiations between the Port Authority and Pan Am commenced in September 1964, nearly five years ago, and of the Port Authority's estimate that it would require only two or three years for it to complete improvements at Teterboro comparable to those proposed by Pan Am, this explanation rings somewhat hollow. The decision to turn Teterboro Airport over to Pan Am has, if anything, actually delayed the improvement of that facility.

²³There are also other capable organizations available to do the job, although the Examiner prevented a full exploration of this question. (R. 2600-05).

In a case such as the present one, involving potential conflicts of interest between two segments of the aviation community and potential anticompetitive practices, the Board's affirmative justification for approving the agreement must be carefully evaluated. As the Board itself has stated, in passing upon an agreement that "has among its significant aspects elements which are plainly repugnant to antitrust principles, approval should not be granted unless there is a *clear showing* that the agreement is required by a serious transportation need, or in order to secure important public benefits." *Local Cartage Agreement*, 15 C.A.B. 850, 853 (1952) (emphasis supplied).

A similar issue was raised in *ABC Air Freight Co., Inc. v. C.A.B.*, 391 F.2d 295 (2d Cir. 1967). That case involved the air freight forwarding business. The Court held that "the Board must make adequately supported findings either that the suspected conflict of interest does not exist *or that important public advantages justify disregarding it.*" *Id.* at 303 (emphasis supplied). In this case, the Board's balancing of public interest factors was illusory, since no important public advantages stemmed from the agreement over and above those that would as surely come into being if the Board disapproved the agreement.

The correct approach to the process of balancing potential anti-competitive effects with public interest benefits was enunciated by the Supreme Court in *United States v. Third Nat'l Bank in Nashville*, 390 U.S. 171, 88 S.Ct. 882 (1968). That case arose under the Bank Merger Act, which permits a bank merger that violates the Clayton Act to be approved where the anticompetitive effects of the merger are outweighed by public interest benefits. In the particular case before the Court, there was no question that the merger would have benefitted the community by allowing a progressive and efficiently managed bank to take over the assets and business of a bank that had suffered serious managerial problems and "secure the better use of its assets in the public interest." *Id.* at 188-89, 88 S.Ct. at 893.

However, the Court found that analysis insufficient, since it did not consider the other possible ways of satisfying the requirements of convenience and need without resort to merger. The Court held that before the merger, with its anticompetitive effects, could be approved, it must meet

the test of showing "that the gain expected from the merger can not reasonably be expected through other means." *Id.* at 190, 88 S.Ct. at 893. Moreover, the burden of making the required public interest showing in accordance with the test established by the Supreme Court rests upon the *proponents* of the anticompetitive arrangement. *Id.* at 192, 88 S.Ct. at 894; *United States v. Provident Nat'l Bank*, 1968 Trade Cas., Par. 72,366 (D.C.E.D. Pa. 1968).

The parallels between the *Nashville Bank* case and the instant proceeding were argued to the Board. However, the Board's opinion ignored Petitioners' arguments on this issue and made no findings as to whether the benefits inherent in approval of the agreement could reasonably be anticipated by other means. Had the Board recognized the applicability of the Supreme Court's test to the present situation, it could not have approved the agreement, since the applicants had not met their burden of proof on this issue. On the contrary, the evidence indicates that the benefits envisioned by the Board would be realized whether or not the agreement was approved.

The Initial Decision did make a brief allusion to the *Nashville Bank* doctrine, brushing aside the Supreme Court's clear holding by the claim that it "rests upon the distinctive wording of the Bank Merger Act." (R. 2873).²⁴ However, the Bank Merger Act contains no specific words requir-

²⁴The "distinctive wording" which allegedly permits the Board to ignore the Court's holding is as follows:

"(5) The responsible agency shall not approve—

(A)

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions,

ing that "a showing be made that the gain expected from the merger can not reasonably be expected through other means." Instead, that interpretation flows naturally from a recognition by the Supreme Court that the principles of antitrust statutes are a fundamental part of the economic policy of the United States and that they should not be overridden unless there is a clear and unmistakable need to do so. It is simple common sense that, if the anticipated gains can be achieved through other means, there is no reason to subject the public to an agreement which violates the policy of the antitrust laws or which contains other features that may be contrary to the public interest.

This sound reasoning applies not only to bank mergers, but to the present arrangement as well. In administering Section 408 of the Federal Aviation Act, the Board has the same power as the banking authorities to approve agreements with anticompetitive implications or other aspects antithetical to the public interest if there are sufficient offsetting public interest benefits to be realized.²⁵ If potential anticompetitive effects exist, the *Nashville Bank* principle requires that the public not be subjected to these effects except upon a showing that the agreement in question provides the only reasonable means of achieving important public benefits.

Finally, the Board failed to recognize that not only would approval of the agreement, with its attendant anticompetitive consequences, be unnecessary to achieve the goal of developing Teterboro and relieving New York air traffic congestion, but it might actually impede long term realization of that objective. By encouraging Pan Am to invest substantial sums in Teterboro, the agreement vests that economically and politically influential corporate giant with an interest in the profitability of Teterboro. Teterboro's profitability, however, is dependent not only on the extent

and the convenience and needs of the community to be served." 80 Stat. 7, 12 U.S.C. § 1828(c).

There is nothing in the foregoing language that is peculiar to bank merger situations. On the contrary, the language is clearly just a way of saying that the "public interest" should be considered in bank merger situations.

²⁵ Except agreements that create a monopoly and thereby restrain competition, which must, under the first proviso to Section 408(b), be disapproved.

to which general aviation is forced off the air carrier airports, but also on the quality of competing general aviation facilities in the New York area. As an air carrier, Pan Am might concur with the objective of developing additional reliever airports in the New York area to serve general aviation. As operator of Teterboro Airport, with profits on a substantial investment dependent upon the volume of business at that airport, Pan Am would be given an incentive to impede development of competing first class general aviation facilities.

This illustrates one of the critical differences between having a major facility such as Teterboro operated by a public body like the Port Authority or by a private, profit-oriented corporation such as Pan Am. To the former, public service would be the primary consideration and the potential diversion of revenue from one facility to another would be of relatively minor concern. To the latter, however, the development of competing facilities would necessarily be viewed as a threat to the revenues and profits that are the primary motivation in the undertaking to improve and manage Teterboro Airport.

IV.

THE BOARD ERRED IN REFUSING TO PERMIT PETITIONERS TO PRESENT FULL WRITTEN BRIEFS AND/OR ORAL ARGUMENT ON THE COMPLEX ISSUES OF THIS PROCEEDING

Under the Board's regulations, cases such as the present one are to be initially determined by a hearing examiner, and are subject to review by the Board as a matter of discretion rather than of right. (14 C.F.R. § 302.27(c)). In this case, the Board granted discretionary review, presumably in recognition of the importance of the issues raised. Furthermore, it was sufficiently dissatisfied with the Initial Decision to write a 22-page opinion of its own. However, the Board's review and affirmance of the Initial Decision was "without further proceedings." In other words, the parties were not given the opportunity to file written briefs to the Board and were not permitted to present oral argument. The Board acted on the basis of its review of the record and the submission of petitions for discretionary review.

By so proceeding, the Board violated the requirements of the Federal Aviation Act, extended its own regulations far beyond their purpose as originally described, and abused its discretion by failing to afford Petitioners a full opportunity to argue the complex and novel questions presented.

A. The Board Was Required by Section 1004(a) of the Federal Aviation Act to Afford Petitioners a Fuller Opportunity to Present Their Position

Section 1004(a) of the Federal Aviation Act, 49 U.S.C. § 1484(a), requires that "in all cases heard by an examiner or a single member the Board *shall hear or receive argument* on request of either party." (Emphasis supplied).

While not necessarily dictating the form in which such argument should be presented, whether oral or written, the statute is unequivocal in its requirement that some form of argument be permitted. In this case, petitioners were deprived of this statutory right, since they were permitted to file for the Board's consideration nothing more than a petition for discretionary review.

A petition for discretionary review is not the same thing as a written brief presenting full argument on the merits. Instead, like a petition for writ of certiorari addressed to the Supreme Court, the function of the petition for discretionary review, in major part, is to emphasize that the case involves "a substantial and important question of law, policy or discretion," 14 C.F.R. § 302.28(a)(2)(iii), or that "a necessary legal conclusion is without governing precedent or is a departure from or contrary to law, Board rules, or precedent." 14 C.F.R. § 302.28(a)(2)(ii). Most important of all, a petition for discretionary review is limited to 20 pages, including appendices and other pages physically attached to the petition. 14 C.F.R. § 302.28(a)(4). In contrast, 50 pages are ordinarily permitted for a brief to the Board. 14 C.F.R. § 302.31(c)(3).

When the statute speaks of the Board's obligation to hear or receive argument, the word "argument" must refer to a full presentation of the contentions of the parties addressed directly to the issues of the proceed-

ing, and not to a document primarily designed to secure Board review of an Initial Decision.²⁶

B. Even if not Required by Statute, the Board's Refusal to Permit Submission of Briefs and/or Oral Argument under the Circumstances of this Case Was an Abuse of Discretion

In this case, the Board reviewed the Examiner's decision and produced an entirely new opinion, 22 pages in length, reaching the same result as the Examiner but setting forth new findings and conclusions, based to some extent on different reasoning from that of the Examiner. The Board thus decided the case itself *on the merits* without affording the parties opportunity to present full argument *on the merits*. The importance of the proceeding and the novelty and complexity of the issues raised made it fundamentally unfair to the Petitioners to deprive them of their right to make a reasonably full presentation—orally, in writing, or both—prior to the issuance of the Board's lengthy opinion deciding the case.

The importance of this case can hardly be denied. The principle on which the Board has based its decision could lead to air carrier control of general aviation facilities in every major city in the United States. It could ultimately alter the basic structure of the American general aviation community. The Board should not embark on such a course with less than the fullest measure of opportunity for presentation of views by interested parties.

Moreover, the need for full dress review is heightened in this situation by the fact that the issues presented are not the sort that the Board is

²⁶The only case interpreting this statutory language is *Sisto v. C.A.B.*, 179 F.2d 47, 86 U.S.App. D.C. 31 (1949). That decision has little bearing on the issue presented in this case, since oral argument was presented, and the issue in *Sisto* was the absence of a quorum at the time of oral argument. The Court held that a Board member absent from the argument could nevertheless vote on the decision because, by reading the argument, he would have satisfied the requirement to "receive" it. 179 F.2d at 54. While the case might thus be considered to stand for the proposition that the Board's statutory obligation does not invariably extend to providing an opportunity for oral argument, it certainly does not hold that the Board may dispense with *both* oral and written arguments, as it has sought to do in this case.

accustomed to deal with and are not in an area where the Board has developed a substantial degree of expertise through repeated exposure. Cf. *Transcontinental Bus System, Inc. v. C.A.B.*, 383 F.2d 466, 484 (5th Cir. 1967), *cert. denied*, 390 U.S. 920 (1968). Throughout the 30 years of the Board's history, the airline industry has maintained batteries of highly paid lawyers and public relations experts to familiarize the Board with the airlines' problems. These airline personnel can and do discuss with the Board general airline problems, such as airport congestion, and thus develop a basic attitude favorable to the airlines' position.

In marked contrast, the Board has no regulatory powers over general aviation and has virtually no knowledge of its problems. The only occasion for general aviation to discuss the congestion problem would be in a case like this, but in such an instance informal discussions are "off limits" because of the adversary nature of the proceeding. Thus, in this proceeding the general aviation industry was faced with the difficult problem of having to counteract years of intensive "educational" activities of the airlines with nothing more than a brief and thirty minutes of oral argument. But even that minimal opportunity was denied! Certainly thirty minutes of the Board's time was not too much to ask in view of the countless hours the Board has spent listening to the airlines' problems.

The impropriety of the Board's utilization of summary review procedures in the circumstances of this case is confirmed by the language of the Board itself at the time it adopted the procedural rule permitting such summary review. The procedure in question, which is "authorized" by Rule 28(d)(1) of the Board's Rules of Practice, 14 C.F.R. § 302.28(d)(1), was adopted by the Board in March 1963. At the time the procedure was proposed by the Board a number of comments were submitted questioning the wisdom of abbreviated procedures in cases sufficiently important to warrant Board review. In rejecting these comments and adopting the rule as proposed, the Board stated:

"But the comments questioned the change in § 302.28(d) which makes briefs and oral argument in cases where the Board decides to review a matter dependent on need therefor. These comments, in substance, reflected the opinions

that . . . any matter sufficiently important for Board review was ipso facto demanding of further briefing and argument; a procedure such as contemplated might violate section 1004(a) of the Federal Aviation Act. . . .

"The basic purpose of the rule change is to enable the Board to dispense with briefs and oral argument *where it is apparent that such additional procedures would serve no useful purpose and would merely burden the parties and the Board. The Board would not employ the abbreviated procedure in such manner as to deprive a party of the right to be heard on any pertinent issue which could reasonably be considered as subject to controversion.*" (Emphasis supplied.) (C.A.B. Reg. No. PR-78, 28 Fed. Reg. 2818, March 20, 1963).

It is inconceivable that the Board could consider that the pertinent issues in this case could not "reasonably be considered as subject to controversion." On the contrary, by the Board's own criteria, this is not an appropriate case for use of the abbreviated procedures, and the Board should have afforded the parties to this proceeding the opportunity to submit full written briefs and to present oral argument on the complex and important issues involved.

The reasons advanced by the Board for rejecting the requests of Butler Aviation and NATA to be heard through submission of briefs and oral argument are insufficient to justify its action. First, the Board asserted that further proceedings were not necessary because lengthy briefs to the Examiner were submitted and because Butler Aviation, at least, used its full 20 pages in petitioning for discretionary review. (R. 2892-2911).²⁷ However, the Board's Rules of Practice specifically provide that "Petitions for discretionary reviews shall be self-contained" and prohibit incorporation by reference of the brief to the Examiner or any other document. 14 C.F.R. § 302.28(a)(4). The Board's contention, if adopted by the Court of

²⁷The fact that Butler Aviation went to the expense and trouble of filing a 72 page brief to the Examiner and a 20 page petition for discretionary review reflects the importance of the case to it and the complexity of the issues involved, both of which are reasons for permitting rather than refusing opportunity for direct presentation to the Board.

Appeals, would lead to the practice of refusing appellants the right to file briefs and oral argument in cases where they had already submitted briefs to the District Judge. We doubt that the Court of Appeals is likely to adopt such a procedure in the near future.

The second reason advanced by the Board is that Petitioners could, in effect, have submitted a written brief in the form of a petition for reconsideration of the Board's order granting review and affirming without further procedures. (R. 3035-36). Petitioners are thus told that they must spend thousands of dollars preparing a full brief without any assurance that the Board would give full consideration to the case, which it had already decided prior to the time the petition would be filed. Neither NATA nor Butler Aviation is sufficiently well funded to endure an expense of this magnitude without any reasonable assurance that their arguments would be given full consideration by the Board. Moreover, there is a vital psychological difference between a brief and a petition for reconsideration. Briefs and oral argument are presented *before* the agency makes up its mind; a petition for reconsideration is filed *after* the decision, so that the party has the difficult and usually insuperable burden of convincing the agency that it was wrong and should admit its error publicly. A petition for reconsideration is simply not the proper vehicle for the submission of an extensive brief on a complicated case.

Finally, the Board concluded that "dispensing with further proceedings was and continues to be warranted by the exigencies of time." (R. 3036). In view of the history of the Port Authority-Pan Am agreement, this is indeed a flimsy basis for denying Petitioners an opportunity to be heard by the Board. Discussions between the Port Authority and Pan Am looking toward an agreement for operation of Teterboro Airport were commenced in September 1964, exactly four years before the Board issued its opinion and order approving the agreement. Had the Port Authority not become entangled with Pan Am, it could have completed the proposed improvements at Teterboro nearly twice over in that span of time. (R. 2253). Indeed, after three years of negotiations, more than three months passed from the time of Pan Am's application to the Board in September 1967 until the issuance of the Board's order setting the case for hearing, and nearly a year passed from that time until the final order in the case.

Moreover, between the issuance of the Initial Decision on May 10 and the Board's opinion on September 25 there was ample time to receive briefs and hear oral argument without delaying final disposition of the case.

Against this background, the admitted desirability of inaugurating improvements at Teterboro hardly justifies depriving those who see the agreement as a substantial threat to their interests and to the public interest of an opportunity to present their views in full to the Board.

Finally, the Board's reasons for refusing further proceedings in this case and for denying the NATA and Butler Aviation petitions for reconsideration, to the extent they have any merit, apply only to the right to file written briefs. Neither the extent of the record available for review by the Board nor the opportunity to file a petition for reconsideration is in any way equivalent to the presentation of oral argument.

Whether the right to present oral argument to an administrative agency is assured as a matter of due process depends on the circumstances of each case. *F.C.C. v. WJR, The Goodwill Station*, 337 U.S. 265, 277, 69 S. Ct. 1097, 1104 (1949). However, many eminent jurists have recognized the great importance of oral argument:

1. The present Mr. Justice Harlan told an audience that "... oral argument on an appeal is perhaps the most effective weapon you have got if you will give it the time and attention it deserves."²⁸

2. According to the late Mr. Justice Jackson, "I think the Justices would answer unanimously that now, as traditionally, they rely heavily on oral presentations."²⁹

3. Judge Miller of the United States Court of Appeals for the District of Columbia Circuit has written that "The longer I sit on the bench the more convinced I become that a lawyer should never submit a case without oral argument."³⁰

²⁸Harlan, *What Part Does The Oral Argument Play In The Conduct Of An Appeal?*, 41 *Corn. L.Q.* 6, 11 (1955).

²⁹Jackson, *Advocacy Before the Supreme Court: Suggestions for Effective Case Presentations*, 37 *A.B.A.J.* 801 (1951).

³⁰Miller, *Oral Argument*, 9 *J. of the Bar Ass'n of the D.C.* 196 (1942).

4. The late Chief Justice Vanderbilt of New Jersey wrote that "cases that are not argued are not well decided."³¹

Implicit in the Supreme Court's decision in the *WJR Case* is the notion that oral argument is an essential constituent of due process and of a fair hearing under certain circumstances. If ever a case presented appropriate circumstances necessitating oral argument in order to insure an intelligent determination of the issues, this is such a case. Accordingly, the Court should remand the case to the Board with directions that it permit Petitioners to present oral argument as well as full written briefs.

CONCLUSION

This case can be summed up in a few simple sentences—most of it unchallenged.

1. There is a vital conflict between the airlines and general aviation for scarce airspace and airport resources, which is most intense in the New York area. Pan Am is on the airline side of this conflict. This is unchallenged.

2. There are also conflicts within general aviation—e.g., high performance aircraft vs. light aircraft, student flying, etc. Pan Am sells high performance aircraft and would earn more money from servicing them. This cannot be challenged.

3. Pan Am would have vast powers over rates, the making and termination of leases, and the establishment and enforcement of rules and regulations at Teterboro. It cannot be challenged that these powers would be extensive.

4. Teterboro is the single most important general aviation facility serving New York City. This cannot be challenged.

The Civil Aeronautics Board says that there is no way that Pan Am could use these extensive powers in the next thirty years to the detriment of general aviation. This general aviation challenges.

³¹ Vanderbilt, *A Unified Court System*, 9 F.R.D. 635, 639 (1949).

That much power, in the context of serious conflicts of interest, is certain to produce grave abuses during the next thirty years. There is no reason to expose the public and general aviation to the risk of such abuses by approving this agreement, which will accomplish no public interest benefits except ones that would be attained as quickly with disapproval.

Accordingly, Petitioners request that the Court reverse the decision of the Board and remand the proceeding with instructions to disapprove the agreement or to conduct such further proceedings as the Court deems necessary and appropriate under the circumstances.

Respectfully submitted,

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APPENDIX

STATUTES AND REGULATIONS INVOLVED

Section 408 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1378, provides, in relevant part:

(a) It shall be unlawful unless approved by order of the Board as provided in this section—

* * * *

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

* * * *

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided*, That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control

Section 1004(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1484(a), provides:

(a) Any member or examiner of the Board, when duly designated by the Board for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Board. In all cases, heard by an examiner or a single member the Board shall hear or receive argument on request of either party.

Section 8(b) of the Administrative Procedure Act, 5 U.S.C. §557(c) provides, in relevant part:

. . . . All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Rule 28 of the Board's Rules of Practice, 14 C.F.R. §302.28, provides, in relevant part:

§302.28 Petitions for discretionary review of initial decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the Board pursuant to this section is not a matter of right but of the sound discretion of the Board. Any party may file and serve a petition for discretionary review by the Board of an initial decision within 25 days after service thereof. Such petitions shall be accompanied by proof of service on all parties.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, Board rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitions shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the examiner, but which the petitioner proposes to argue on brief to the Board, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the Board or the Chief Examiner, petitions shall not exceed 20 pages including appendices and other papers physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the Board.

* * * *

(d) *Review proceedings.* (1) The Board will exercise its right of review upon petition for review or on its own initiative when two or more Board members vote in favor of review. The Board will issue a final order upon such review without further proceedings on any or all the issues where it finds that matters raised do not warrant further proceedings.